

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E837 OF 2024

**KENYA UNION OF COMMERCIAL
FOOD AND ALLIED WORKERS**
.....CLAIMANT

- VERSUS -

REAL AUTO SPARES LIMITED.....
RESPONDENT

JUDGMENT

Introduction

1. The Claimant lodged this suit through a Memorandum of Claim dated 1st October, 2024, wherein it seeks that the Court:
 - i. Declare that the Respondent's refusal to sign a Recognition Agreement as unlawful and order the Respondent to Recognize the Claimant as the sole Trade Union claiming representation of its employees.
 - ii. Engage the Claimant in collective bargaining upon signing Recognition Agreement within 30 days
 - iii. Do find that the Respondent's failure to comply with the Order or Notice issued under part (vi) of the Labour Relations Act, 2007 contravened this section, thus

committing an offense as prescribed under section 50(10) of the Act under reference

- iv. The Hon. Court do direct the Respondent to deduct and remit union dues as already authorized by Union members through the check off sheets.
- v. Order payment of quantified costs of this claim to the Claimant

2. The Respondent did not lodge a Response to the Claim.
3. Parties were directed to canvass the main claim by way of written submissions, and submissions were received from both parties.

The Claimant's Case

4. The Claimant's case is that the Respondent is a spare parts business operating in Nairobi and Mlolongo, and it falls within the sector covered by the Claimant's constitution and rules. It further avers that, in February 2024, the Claimant conducted a recruitment exercise and successfully recruited 26 of the Respondent's 28 unionisable employees, thereby exceeding the threshold required for recognition under Section 54(1) of the Labor Relations Act, 2007.
5. The Claimant states that on 21st March 2024, it submitted a check-off form to the Respondent listing employees for the deduction and remittance of union dues, but the Respondent did not act on this request, and its efforts were unsuccessful. It avers that the Respondent failed to comply with its request

to deduct and remit union dues and also declined to sign the draft Recognition Agreement.

6. It is the Claimant's case that on 9th April 2024, it reported a trade dispute, and that subsequently, on 15th June 2024, a conciliator was appointed to handle the matter. It avers that it prepared memorandum proposals in anticipation of conciliation meetings.
7. The Claimant states that the conciliator later invited both parties to attend a meeting scheduled for 12th August 2024. It further states that, by 30th August 2024, the conciliation process had not been concluded, prompting the Claimant to request an additional meeting for proper deliberations, but to date, the conciliator has neither convened further meetings nor issued findings or recommendations.
8. The Claimant asserts that it has already recruited the required number of employees for recognition, and the Respondent is in possession of their details, and that the employees have exercised their constitutional right to join a trade union in order to secure better terms and conditions of service through collective bargaining.
9. The Claimant maintains that a Recognition Agreement is essential to enable collective bargaining and uphold employees' constitutional rights under the Constitution of Kenya, 2010.

10. It is the Claimant's case that the Respondent's refusal to recognize the union, sign the agreement, or deduct and remit union dues despite receiving the check-off forms, amounts to an unfair, unlawful, and unconstitutional labour practice that infringes on workers' fundamental rights.
11. The Claimant states that employees have shown no misconduct or improper intent in pursuing union representation. It avers that the check-off forms were duly authorized by a Gazette Notice issued by the Cabinet Secretary for Labour, which permitted the deduction and remittance of union dues to both the Claimant and the Central Organization of Trade Unions, with specified payment details.
12. The Claimant states that despite meeting the required threshold for recognition, it was unfairly and unlawfully denied recognition. It avers that the Respondent refused to sign the Recognition Agreement or remit union dues without providing any justification.
13. The Claimant contends that it made all reasonable efforts to resolve the dispute amicably, but the Respondent remained uncooperative, forcing it to invoke the relevant provisions of the Labour Relations Act, 2007, by approaching the Court, asserting that all dispute resolution mechanisms have been exhausted, and seeking judicial intervention to ensure justice is served.

14. The Claimant argues that failure to grant the orders sought may expose unionisable employees to victimization for exercising their right to join a union, and therefore urges the Court to act expeditiously. It emphasizes that the right to freedom of association is protected under the Constitution of Kenya and relevant ILO Conventions.
15. The Claimant further submits that without a Recognition Agreement, employees cannot effectively bargain for better terms and conditions of service, making the Respondent's continued refusal a violation of constitutional rights under Articles 36 and 41(c), which guarantee freedom of association and the right to participate in trade union activities.
16. It contends that the Respondent's actions demonstrate an anti-union stance, interfere with employees' rights, and risk causing industrial unrest. Additionally, the Claimant alleges that the Respondent is intentionally denying the union its lawful dues and hindering its functions.
17. The Claimant concludes that only the Court's intervention and grant of the requested orders will protect employees from unlawful, anti-union practices and safeguard their rights.
18. The Claimant relies on Section 48 of the Labour Relations Act, 2007, which governs the deduction and remittance of union dues. It submits that once a union obtains a ministerial

order and serves the employer with duly signed check-off forms, the employer is legally required to begin deducting and remitting union dues within 30 days. It avers further that the law provides that deductions should continue unless an employee formally resigns from the union, which must be communicated in writing.

19. The Claimant emphasizes that none of the Respondent's employees has resigned or withdrawn from union membership, and therefore the Respondent has no legal basis to refuse deductions. It avers further that under Section 50(8) and (10) of the Act, failure to comply with such orders or notices constitutes an offense.
20. Additionally, the Claimant cites Section 19(1) of the Employment Act, 2007, which allows lawful deductions from employees' wages where authorized by law or requested by employees, reinforcing the legality of union dues deductions.
21. The Claimant submits that, based on the foregoing provisions, there is no justification for the Respondent's refusal to deduct and remit union dues or to sign the Recognition Agreement. It maintains that such refusal undermines collective bargaining and violates employees' rights to participate in trade union activities.
22. Finally, the Claimant notes that the right to freedom of association is not only protected under Kenyan law but also supported by international standards, particularly ILO

Conventions No. 87 and 98, which guarantee the right to organize and engage in collective bargaining.

23. The Claimant prays that the Court allow its Claim and grant the orders sought.

The Claimant's Submissions

24. The Claimant submits that a Recognition Agreement is a standard document, and any proposed changes must be made jointly with the involvement and agreement of all parties. It submits further that the Respondent failed to participate or make itself available for such engagement, rendering any unilateral changes invalid and untenable.
25. The Claimant submits that in February 2024, it conducted a recruitment exercise and successfully enlisted 26 out of 28 unionisable employees of the Respondent, which represents over a 93% majority, exceeding the threshold required for recognition under Section 54(1) of the Labour Relations Act, 2007.
26. The Claimant argues that since the filing of the suit, the Respondent has not disputed that the required threshold for recognition was met. Instead, the Respondent raised issues with the standard Recognition Agreement but failed to engage in discussions to resolve them, making it impossible to accommodate any proposed changes.
27. The Claimant further submits that if the Respondent desired a customized Recognition Agreement, there was an

opportunity to negotiate one, but the Respondent did not take advantage of this.

28. It concludes that continued delay in signing the agreement unfairly disadvantages the Respondent's employees, as it denies them the essential tool needed to exercise their collective bargaining rights.

The Respondent's Submissions

29. The Respondent admits receiving the list of employees said to be union members, but argues that recognition of a trade union is not automatic or mandatory. It submits that recognition must strictly comply with the requirements of the Labour Relations Act.
30. The Respondent further contends that the Claimant is improperly seeking to force recognition and deduction of union dues without fully meeting the necessary legal thresholds, and in disregard of the Respondent's lawful position.
31. The Respondent sought reliance on Section 54 of the Labour Relations Act, to emphasize that recognition of a trade union is meant to facilitate collective bargaining and must be formalized through a recognition agreement. It argues that recognition is not automatic but a voluntary statutory process that depends on mutual consent between the parties. According to the Respondent, a recognition agreement is contractual in nature and cannot be imposed without agreement.

32. The Respondent maintains a firm position that it is unwilling to enter into or sign a recognition agreement with the Claimant union. It further contends that submitting a list of alleged union members does not, by itself, create a legal obligation to grant recognition, nor can recognition be compelled by the court.
33. Additionally, the Respondent disputes the Claimant's characterization of recognition agreements as standard and mandatory documents, asserting instead that they are negotiable instruments that can be accepted, amended, or rejected.
34. The Respondent further argues that its refusal to sign the recognition agreement, on its own, does not constitute an unfair labour practice.
35. The Respondent submits that it is not legally required to justify its refusal to recognize a union, so long as it does not interfere with employees' freedom of association. It maintains that employees remain free to join the union and that no intimidation or victimization has occurred. According to the Respondent, recognition is not a constitutional right but a collective bargaining mechanism that cannot be imposed on an unwilling employer.
36. On union dues, the Respondent emphasizes that deduction and remittance must strictly comply with Section 48 of the Labour Relations Act. It asserts that this process requires

proper service of duly executed check-off forms and full adherence to statutory procedures and timelines. The Claimant, it argues, has not proven such compliance, and mere submission of documents is insufficient. The Respondent further warns that making deductions without strict compliance could expose it to criminal liability under the law.

37. It also rejects the Claimant's reliance on Section 19 of the Employment Act, stating that union dues are specifically governed by the Labour Relations Act and must follow its procedures.
38. Regarding constitutional rights, the Respondent acknowledges employees' freedom of association but insists this does not translate into forced recognition or compelled deductions. It denies the allegations of anti-union conduct, stating that no evidence has been provided to support the claims of intimidation or unfair labour practices.
39. In conclusion, the Respondent maintains that recognition must arise from a mutually agreed agreement, and that statutory requirements for deduction of union dues have not been met. It argues that the Claimant's request for court orders is premature and unjustified.
40. Finally, the Respondent asks the Court to decline enforcement of recognition without a finalized agreement, refuse orders for deduction of union dues absent strict

compliance with the law, and dismiss the Claimant's application with costs.

Analysis and Determination

41. I have considered the pleadings and the rival submissions.

The dispute herein revolves around two core issues:-

- i. Whether the Claimant is entitled to recognition under Section 54 of the Labour Relations Act, 2007.
- ii. Whether the Respondent is obligated to deduct and remit union dues under Section 48 of the Act.

Whether the Claimant Union is entitled to Recognition

42. Section 54(1) of the Labour Relations Act provides that an employer shall recognize a trade union for purposes of collective bargaining if that union represents a simple majority of unionisable employees.

43. The Claimant has demonstrated by the evidence before court that it recruited 26 out of 28 unionisable employees of the Respondent, and notably, the Respondent did not file a formal response to challenge this threshold. The Court notes that the Respondent's submissions merely raise legal objections without rebutting the factual position.

44. It is now settled that once a union meets the simple majority threshold, recognition is not discretionary. In ***Kenya Union of Commercial Food and Allied Workers v Meru North Farmers Sacco Ltd [2014] eKLR***, the Court held that recognition becomes mandatory once a union attains a

simple majority, and that the employer cannot arbitrarily refuse to recognize a union.

45. Further in ***Banking Insurance & Finance Union (Kenya) v Murata Sacco Society Ltd [2018] KECA 878 (KLR)***, the Court stated that an employer cannot defeat recognition by declining to sign a recognition agreement where the statutory threshold is met. Similarly, in ***Kenya Plantation & Agricultural Workers Union v James Finlay (Kenya) Ltd [2016] KEELRC 1008 (KLR)***, the Court emphasized that recognition is a statutory obligation, not a matter of employer preference.
46. The Respondent's argument that recognition is "voluntary" and based on mutual consent is therefore legally incorrect. While the recognition agreement is a formal instrument, the duty to recognize arises from statute rather than consent.
47. Further, Article 41 of the Constitution guarantees the right to collective bargaining, which can only be actualized through recognition.
48. In the final analysis, I find and hold that the Claimant has proved that it met the statutory threshold and the Respondent's refusal to recognize the Claimant union is therefore unlawful and contrary to Section 54, and amounts to an unfair labour practice.

Whether the Respondent is obligated to deduct and remit union dues under Section 48 of the Act

49. Section 48 of the Labour Relations Act provides that an employer must deduct and remit union dues upon service of duly executed check-off forms and a ministerial order.
50. The Claimant has shown that Check-off forms were served upon the Respondent, copies of which have been produced in evidence. It is also evident that the said check-off forms were backed by a Gazette Notice, and no evidence had been placed before the court to show that any employee had withdrawn from the union membership.
51. The Respondent, on its part, does not deny receipt of the Check-off forms, but only alleges procedural non-compliance without any proof.
52. In my considered view, once check-off forms are duly signed and served, deduction of union dues becomes mandatory.
53. It therefore follows that failure to remit union dues after proper authorization is a violation of Section 48 and an unfair labour practice.
54. The Respondent's argument that it risks criminal liability is misplaced, as the statutory risk arises only where deductions are made unlawfully, and not where an employer complies with valid check-off instructions.
55. I conclude that there is sufficient evidence of compliance by the Claimant, and the Respondent's refusal to deduct and remit union dues is unjustified and contrary to Section 48.

Whether the Claimant is entitled to the reliefs sought

56. The court, having found that the Claimant has met the statutory threshold for recognition and the Respondent has not shown lawful justification for refusal to recognize, no doubt entitles the Claimant to the reliefs sought.

57. In the premise, the Claimant's Claim succeeds, and the following orders are granted:-

- i. A declaration that the Respondent's refusal to recognize the Claimant union is unlawful and constitutes an unfair labour practice.
- ii. An order be and is hereby issued compelling the Respondent to recognize the Claimant union as the representative of its unionisable employees within 30 days, and to thereafter engage in collective bargaining.
- iii. An Order be and is hereby issued compelling deduction and remittance of union dues in accordance with Section 48 of the Act, based on the submitted check-off forms.
- iv. Parties shall bear their own costs of the suit in the interest of continued social partnership.

58. Judgment accordingly.

SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 16TH DAY OF APRIL 2026.

**C. N. BAARI
JUDGE**

Appearance:

N/A for the Claimant

Ms. Nambande present for the Respondent

Ms. Esther S- C/A

ORIGINAL