



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT  
NAIROBI**

(ON Makau J on 30<sup>th</sup> April, 2026)

**CAUSE NO. E724 OF 2025**

**KENYA UNION OF SPECIAL AND**

**PROFESSIONAL GUARDS**

**(KUSPROG).....CLAIMANT**

**-VERSUS-**

**GARDAWORLD**

**SECURITY**

**(K)**

**LTD.....RESPONDENT**

**RULING**

1. This Ruling relates to the Claimant's Notice of Motion dated 9<sup>th</sup> December 2025 brought under section 3 and 12 of the Employment and Labour Relations Court Act, section 48,49,

50 and 82 of the Labour Relations Act and Rule 45 of the Employment and Labour Relations Court (Procedure) Rules.

The Claimant seeks the following orders: -

***a) That, this application be certified urgent, service of this application upon the Respondent be dispensed with and the same be heard ex parte in the first instant.***

***b) That, pending the hearing and determination of this application and the suit, or further orders of this Honourable Court, an Order does issue staying the implementation of the purported 1433 withdrawals, resignations, and/or objections of the Claimant members, after they were coercively and forcefully removed from the Applicant membership pool.***

***c) That, pending the hearing and determination of this Application and the main suit, an order does issue prohibiting, preventing and stopping the Respondent from interfering with the Claimant/Applicant members from its roll by either transferring them to another union or to discontinue them from being members of the Applicant.***

- d) That, pending the hearing and determination of the application and the suit, an order of injunction does issue to compel the Respondent to effect deductions, and continue to deduct and remit, as required under section 48(3) of LRA, 2007 the union dues from the wages of 2088 employees whom the Respondent confirmed as valid Claimant union members.***
- e) That, pending the hearing and determination of the application and the suit, an order of injunction does issue to compel the Respondent to effect deductions of union dues from the wages of 1433 employees and remit the said deduction to the Applicant designated bank account in line with Legal Notice No 1 of 2025.***
- f) That, an order of injunction does issue to direct labour officers in respective counties, where the Respondent has employees to visit those employees with the representative of the applicant union and gather information from them on what might transpired to cause a mass objection contrary to section 48(6) of LRA, 2007, and make a report to court.***

***g) That, in the alternative, an order be granted directing the Respondent to make deductions in the nature of union dues from wages of 1433 employees, the said deductions and thereafter to continue to deduct and deposit the same into escrow account, or any other account the Court may order, awaiting hearing and determination of the instant application and the main suit.***

***h) That, the cost be provided for.***

2. The Motion is supported by the Affidavits of Samson Omechi Ong'era and Odhiambo Antony Saoke both sworn on 9<sup>th</sup> December 2025 and a Supplementary Affidavit sworn by Samson Omechi Ong'era on 17<sup>th</sup> January 2026.
3. The Motion is opposed by the Respondent through the Replying Affidavit of Victor Komu sworn on 19<sup>th</sup> December 2025 and it was disposed of by way of written submissions. The Claimant filed its submissions on 19<sup>th</sup> January 2026 and the Respondent filed on 12<sup>th</sup> February 2026.

## **Background**

4. On 23<sup>rd</sup> October 2025, this Court delivered a Ruling in respect of the Claimant's Notice of Motion dated 25th July 2025 whereby it issued orders restraining the Respondent from intimidating, coercing, or victimizing employees or interfering with their membership in the Claimant union pending conciliation of the disputed membership recruitment by the Claimant.
5. On 4<sup>th</sup> November 2025, the Respondent communicated to the Claimant that it had verified the recruited members and it was ready to implement deduction of union dues from 2088 employees, with effect from November 2025 payroll. This position was also communicated to the Court on 6<sup>th</sup> November 2025 when the matter was mentioned.
6. The Court directed the parties to meet and resolve the matter amicably but immediately after the mention of the matter on 6<sup>th</sup> November 2025, the Respondent, through its Human Resource and Operations teams, allegedly, embarked on a campaign to coerce and intimidate employees who were members of the Claimant union to

resign from the union. The union members were given forms to sign requiring them to consent to deduction of union dues in favour of the Claimant and agency fees in favour of a rival union, the Kenya National Private Security Workers Union (KNPSWU).

7. The Claimant further alleges that through this exercise, the Respondent successfully coerced 1433 employees to withdraw from the Claimant union, it forwarded to the Claimant the purported withdrawal letters signed by said employees.
8. The Respondent denies the allegations of coercion and intimidation. The Respondent states that it received handwritten letters from 1433 employees withdrawing from the Claimant union. The Respondent further states that it received complaints from some employees that they had not signed the Form S submitted by the Claimant, while others alleged that their signatures had been forged.
9. It clarified that it had initially acknowledged that 2088 members were recruited but after thorough scrutiny, it

realized that only 1940 were members as the list included 8 administrative staff, 13 contract staff exiting in November 2025, and 127 repeated names. It further averred that it cannot compel employees to remain members of the Claimant union against their will.

10. The Respondent contends that it has implemented the recommendations of the Conciliation Report by deducting and remitting union dues for active employees who are members of the Claimant, and as such the court is now *functus officio*. It further averred that the orders sought by the motion do not flow from the claimant's pleadings and therefore they cannot be granted.

### **Analysis**

11. Having carefully considered the Notice of Motion, the rival affidavits and submissions filed, the main issues for determination are as follows:-

- a) Whether the court is ***functus officio*** in this matter.
- b) Whether the orders sought by the motion herein are untenable.

- c) Whether the purported withdrawals and resignations by the 1433 employees from the Claimant union were voluntary and lawful;
- d) Whether the Claimant has met the threshold for the grant of the orders sought.

***Functus officio***

12. A court becomes *functus officio* after conclusively determining a dispute litigated before it. In this case, the respondent argued that the court is *functus officio* since the dispute was referred to conciliation and a Report was filed by the conciliator and complied with. I have considered the conciliator's report. It is clear that the respondent was faulted for requiring the claimant's members to sign a consent authoring deduction of union subscription in favour of the claimant and agency fees in favour of the rival union. It clarified that the deduction of agency fees from its employees was unlawful as there was no order from the Cabinet Secretary, authorizing the levy with respect to the CBA registered in 2023, as required by section 49 of the

Labour Relations Act. Therefore, the conciliator recommended that the employer stops the said illegal deduction and comply with section 19 of the Employment Act and Section 48, 29 and 50 of the Labour Relations Act.

13. The conciliator resolved the question of deduction and remittance of agency fee and union dues and the parties accepted the conciliator's decision before the court. In addition, the court ruling of 23<sup>rd</sup> October 2025 made orders restraining the Respondent from intimidating or interfering with its employees' membership to the Claimant union. This means that order 3, 4 and 6 in the instant motion are overtaken by events and the court cannot litigate over the same.

14. However, the conciliator did not resolve the question of the number of the recruited members from whom union dues shall be deducted; whether the Respondent should refund the agency fees deducted unlawfully from August 2023; and whether the respondent should pay the Claimant the union dues not deducted from December 2024 to August 2025.

These matters are still pending determination and therefore the court is not *functus officio*.

### **Untenable orders**

15. The Respondent contends that the Notice of Motion is incompetent on the basis that the prayers sought therein have neither been sought nor pleaded in the Statement of Claim dated 25<sup>th</sup> July 2025. The Respondent submits that the Court cannot issue orders on issues that have not been pleaded.

16. The Statement of Claim dated 25<sup>th</sup> July 2025 seeks the following reliefs:-

***(a) An order of declaration does issue that, the Respondent has breached the law and has expended the wages of the members of the Claimant members unlawfully.***

***(b) An order of injunction does issue to compel the Respondent to pay to the Claimant all the accrued union due from her own pocket and as tabulated at paragraph 19 herein.***

- (c) An order of injunction does issue to compel the Respondent to pay and remit to the Claimant's union designated account the withheld union dues deductible covering the months of December, 2024; January, February, March, April, May, June and July and August 2025 when due.**
- (d) An order of injunction does issue to compel and order the Respondent to strictly comply with the provisions of Section 48 of Labour Relations Act, 2007 in terms implementing notices in Form S (Check-Offs) when forwarded and become due.**
- (e) An order of permanent injunction does issue to restrain the Respondent from further making unauthorized deductions from the wages of the members of the Claimant union.**
- (f) An order of permanent injunction be and is hereby issued against the Respondent preventing her from intimidating, harassing, coercing and victimizing Claimant's unionisable employees, members of the Claimant Union.**

**(g) An order to be issued against the Respondent, directing Respondents Management to pay or/and compensate, from the pockets, the Claimant Union all the un-deducted union dues for all months due for deduction in favour of Claimant Union.**

**(h) Any other order the Honourable Court may deem fit to grant for the ends of justice to materialize.**

**(i) Costs be met by the Respondent.**

17. Save for the orders which are covered by the conciliator's report and the court's ruling of 23<sup>rd</sup> October 2025, the instant Notice of Motion seeks, order staying implementation of withdrawals and resignations by 1433 employees, which is a development that occurred after the filing of the Statement of Claim.

18. The law is well settled that a court will not base its decision on unpleaded issues because the issues to be determined by the court must flow from pleadings. The Court of Appeal

in **Pacific Frontier Seas Ltd v. Kyengo & another (Civil Appeal 32 of 2018) [2022] KECA** held that:-

***“ As regards unpleaded issues, the principle is well settled that a court, even when it has jurisdiction, will not base its decision on unpleaded issues because the issues determined by the court must flow from pleadings. It is the pleadings which guide the litigation and succinctly inform the parties and the court what is in dispute.”***

19. It follows that where new matters arise after the filing of pleadings, it is not permissible for a party to seek interlocutory relief in relation to those matters. The issue of resignation of 1433 members is beyond the mandate of the court to adjudicate over the same. Consequently, I hold that the order 2,5 and 7 in the motion are untenable as they do not flow from the Statement of Claim dated 25<sup>th</sup> July 2025.

### **Involuntary withdrawals and resignations of membership**

20. Without prejudice to the foregoing, I have considered the alleged involuntary withdrawals and resignations from the

claimant union. Section 48(6) of the Labour Relations Act, 2007 provides as follows:

***“ A member of a trade union may withdraw from the trade union by giving notice in writing to the trade union and the employer of the member’s withdrawal.”***

21. The Court in **Kenya Union of Entertainment & Music Industry Employees v. Kenya Cultural Centre [2025] KEELRC 641 (KLR)** held that:-

***“Accordingly, upon withdrawal from the Union, an employer cannot make any deduction from an employee in the form of trade union dues. Therefore, the Claimant's argument that the Respondent had no authority to stop the trade union dues deductions on the basis that it had not forwarded to it (Claimant) the notices of the withdrawal from the union does not hold. In any event, the Claimant was made aware of the withdrawal from the union by the members themselves, hence that constituted sufficient notice.”***

22. The central question in this matter is whether the purported withdrawals by the 1433 employees were voluntary and free

from coercion, intimidation, or undue influence by the Respondent. The Claimant has exhibited a sample of a notice titled "Consent Notice" which required employees to consent to deduction of union dues in favour of the Claimant and agency fees in favour of KNPSWU. The said communication was made immediately after the Respondent confirmed that it would commence deduction of union dues for 2088.

23. The Claimant also exhibited show-cause letters issued to Mr. Nicholas Onyango Ogolla on 14<sup>th</sup> November 2025 and to Mr. Cleophas Wekesa on 18<sup>th</sup> November 2025. The Claimant contends that these disciplinary actions were taken against the said employees on account of their membership in the Claimant union.

24. The Respondent, on its part, has exhibited a sample of handwritten letters from employees withdrawing from the Claimant union. The Respondent has also exhibited documents from some employees stating that they did not sign the Forms S presented by the Claimant and that their signatures were forged.

25. The Court in **Kenya Union of Commercial Food and Allied Workers v. Kitui Teachers DT Sacco Society Ltd (Cause E018 of 2023) [2023] KEELRC 853 (KLR)** held that:-

***“No evidence was led to support the allegation that these letters were written through coercion by the Respondent. In the result, I find and hold that the Claimant has failed to establish a prima facie case to warrant an interlocutory injunction.”***

26. In the present case, however, the Claimant has adduced evidence pointing to the circumstances leading to the membership withdrawals including the presentation of consent forms requiring employees to consent deduction of union dues to the claimant plus agency fees to a rival union. The conciliator, in her undisputed report, made a finding that such a move by the Respondent was unlawful as there was no ministerial order for levying agency fees.

27. There is however, no evidence to prove that the respondent coerced or pressured the 1433 employees to write letters for withdraw/resign from the claimant as at the time the court

had already issued injunction orders restraining the respondent from intimidating the claimant's members or interfering with their union membership. One wonders why the injunction orders were sought if the claimant was not intending to enforce the same. In the circumstances, and without prejudice to my holding above, I find that the Claimant has not proved that the withdrawal/resignation was involuntary.

### **Conclusion**

28. I have found that the orders sought in the instant motion have either been overtaken by events or they are untenable as they do not flow from the pleadings. I have further found that the claimant has not proved by evidence that the 1433 employees involuntarily withdrew or resigned from the claimant union after obtaining injunction orders from this court on 23<sup>rd</sup> October 2025. Consequently, I find no merits in the Notice of Motion dated 9<sup>th</sup> December 2025 and dismiss it with costs.

29. For avoidance of doubt, the claimant is free to recruit the 1433 members back to its membership now that the Conciliator resolved the issue of agency fee to the rival union.

30. The parties are directed to take a mention date for pretrial conference in order to fast tract the determination of the outstanding issues in the suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 30<sup>TH</sup> DAY OF APRIL, 2026.**

**ONESMUS MAKAU**

**JUDGE**

**Appearance**

Ongera for Claimant

Richu for Anzala for Respondent