

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA

(Before Hon. Lady Justice Monica Mbarũ)

CAUSE NO. E082 OF 2025

KENYA ENGINEERING WORKERS UNION.....CLAIMANT

VERSUS

CENTRAL ELECTRICALS

INTERNATIONAL LIMITED.....RESPONDENT

JUDGMENT

The Claimant is a registered trade union under the Labour Relations Act (LRA).

The Respondent is a limited liability company. The Respondent business falls under the areas of operation of the Claimant union.

The claim is that the Claimant recruited members from the Respondent's employees within the provisions of Article 36 of the Constitution. From the total unionisable employees, the Claimant secured not less than 50+ 1 members and, under section 48(2) of the LRA, attained the threshold for recognition.

The Claimant attempted to engage in dialogue with the Respondent, but all efforts proved futile. The Claimant thus seeks orders that the court find the Respondent in violation of Section 48(2) of the LRA and articles 36 and 41 of

the Constitution. The Respondent is directed to effect the deduction of union dues and remit to the Claimant pursuant to the LRA, and is also compelled to pay the union dues in arrears.

In evidence, the Claimant called Francis Angaira Jirongo, the coast area secretary, who testified that he recruited employees into the membership of the Claimant on 2nd December 2024 and 19th July 2025. A total of 33 employees were recruited. They signed the check-off forms, which were forwarded to the Respondent to effect the deduction of union dues and the remittance to the Claimant under section 48(2) of the LRA. The Respondent has refused to comply. According to the check-off forms, the outstanding union dues should be paid from the Respondent's account, as the Respondent has acted contrary to the LRA provisions.

Jirongo testified that the check off forms submitted were received by Ms Gladys but not stamped. She said there was no authority from the director to accept the forms. The list of the 33 employees who signed the check-off forms is not in court, as the claim relates to the Claimant.

Jirongo testified that upon the employee joining the Claimant union, 7 were threatened with summary dismissal. Unless the orders sought are granted, the Claimant will suffer loss and damage. The employees who have joined the Claimant union fear victimisation.

In response, the Respondent denied the claims. There was no service of check-off forms, as alleged by the Claimant. The membership of the alleged employees of the Respondent is without evidence. There was no refusal to deduct union dues, and there is no Recognition Agreement between the parties. Without such an agreement, the Respondent has no legal duty to engage the Claimant union. There is no basis to deduct and remit union dues from its employees.

The claim is filed to seek and obtain money from the Respondent without any reason or basis. If the Claimant seeks to obtain money from the Respondent's employees, it should be obtained from the employees, not the Respondent.

In evidence, the Respondent called Scaver Malusha Mwakulomba, the human resources manager, who testified that the check-off forms filed by the Claimant were never received by the Respondent. There is no agreement with the Claimant with regard to the listed persons to effect trade union dues and remit to the Claimant. Most of the listed persons in the check off forms are not in the service of the Respondent. Some employees deserted duty, and 90% of those listed are no longer in the Respondent's service.

Of the 33 listed persons, 16 are not in the service of the Respondent

Since December 2024, all employees have been paid full salaries without deductions. The Respondent was at liberty to release the employees because there was no work, and the suit should be dismissed with costs.

The Claimant filed written submissions, which are analysed.

The Claimant asserts that it recruited 33 of the Respondents' employees as members. A check-off form has been filed to support these assertions.

The Respondent denied the claims but admitted that of the 33 employees listed in the check-off forms, 16 have left its service, others deserted duty, and since December 2024, others have been paid off due to lack of work.

The claim that the Claimant had recruited 33 employees in the service of the Respondent is given support. However, the Respondent did not file any records to support its assertions.

Under section 48(2) of the LRA provides that

- (2) A trade union may, in the prescribed form, request the Minister to issue an order directing an employer of more than five employees belonging to the union to—***
- (a) deduct trade union dues from the wages of its members; and***
- (b) pay monies so deducted—***
- (i) into a specified account of the trade union; or***

(ii) in specified proportions into specified accounts of a trade union and a federation of trade unions.

If the trade union recruits more than 5 employees from a single employer, the employer should deduct and remit trade union dues to the trade union. Failure to effect such deductions and remittances is a labour offence as held in **Kenya Concrete, Structural, Ceramic Tiles, Wood Plys and Interior Design Workers Union v Wanxin Investments Limited [2021] KEHC 3895 (KLR)**.

The Deduction and remittance of trade union dues flows from the relevant ministerial order and check-off forwarded to the Respondent by the Claimant. 33 check-off forms have been forwarded to the Respondent. However, there is contestation about the receipt of the list, but as set out above, the chronology of events that 16 employees left and that others have since left employment gives credence to the claim that 33 employees were recruited.

The deduction and remittance of trade union dues is not dependent on the trade union and the employer having a Recognition Agreement. The provisions of sections 48 and 54 of the LRA are contextualized differently and relate to different mandates.

Whereas section 48 requires the employer to deduct and remit trade union dues, section 54 of the LRA requires the employer to recognise the trade union for the sole purpose of negotiating a collective agreement (CBA).

In the given circumstances, the Claimant shall be allowed to return to the shop floor within the legal limits and recruit members from the Claimant's employees. The Respondent shall grant the Claimant reasonable access in this regard. Upon recurrence and execution of the check-off forms, pursuant to section 48(2) of the LRA, for all employees recruited above 5, the Respondent has a legal duty to deduct and remit the trade union dues to the Claimant. Upon the claim attaining the legal threshold for recognition, the claim shall engage the Respondent in this regard. Where the Respondent remains uncooperative, the Claimant shall be at liberty to move the court as appropriate.

On the claim, as directed above, the orders sought shall not issue. The parties shall return to the shop floor and secure the recruitment of union members among the Respondent's employees. To ensure industrial peace, no orders on costs.

Delivered in open court at Nairobi, this 23rd day of April 2026

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Catherine and Omar

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