



**Kenya Private Universities Workers Union v Islamic University of Kenya
(Cause E667 of 2024) [2025] KEELRC 252 (KLR) (31 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 252 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E667 OF 2024
SC RUTTO, J
JANUARY 31, 2025**

**BETWEEN
KENYA PRIVATE UNIVERSITIES WORKERS UNION CLAIMANT
AND
ISLAMIC UNIVERSITY OF KENYA RESPONDENT**

RULING

1. By way of a Notice of Motion Application dated 19th August 2024, the Claimant/Applicant moved this Court seeking the following orders:
 - a. Spent
 - b. That a prohibitory order be issued against the Respondent by way of redundancy, termination or dismissal restraining herself and or her agents from victimizing her unionizable employees members on ground of Trade union affiliation /activities till the hearing and determination of this suit.
 - c. That prohibitory orders be issued against the Respondent to allow the Applicant/Claimant union to access its members plus other potential members till the hearing and determination of this suit.
 - d. That, the Honorable court issue an order against the Respondent to comply by mandatory provision of the law Section 48 of the Labor Relations Act, 2007, plus Section 19 of the *Employment Act*, 2007 by way of deducting and remitting union dues from the Applicant members who have duly signed the check off forms pending the hearing and determination of the suit.
 - e. That any other order the Honourable court may deem fit to grant.



2. The Application is supported by the Affidavit sworn on 19th August 2024, by Stephen Emisembe Owiti who has described himself as the General Secretary of the Claimant Union.
3. Mr. Owiti avers that the Claimant Union has written various letters from 2018 to date requesting to hold both management and workers meeting at the Respondent University but the Respondent has refused to grant that permission.
4. He further deposes that upon the Respondent's management refusal to allow union officials access, the union wrote to COTU-K for indulgence.
5. Mr. Owiti further states that on 10th March 2022, the Claimant had to report a trade dispute to the Minister of Labour and Social Protection and on 7th April 2022, the conciliator appointed invited both parties for a meeting which the University management did not attend.
6. On 12th August 2024, the Claimant Union forwarded Form S popularly known as check-off forms but due to fear of victimization from the Respondent, it was prompted to file this matter under certificate of urgency during the court vacation to seek protection of its members from victimization.
7. The Claimant Union has continued recruiting workers but most of them fear victimization upon their membership.
8. The Respondent has countered the Application through the Replying Affidavit sworn by Ibrahim Larry Bakari on 24th September 2024. Mr. Bakari who has described himself as the Respondent's Human Resources Manager, avers that the Application is overtaken by events since the Respondent's members of staff who had joined the Claimant union have since withdrawn their membership.
9. Mr. Bakari admits that the intention to recruit University staff into the Claimant union commenced in 2018 vide a letter dated 8th November, 2018. That the said letter requested for a meeting with the Respondent's staff between noon and 2 pm on 22nd November, 2018. Mr. Bakari avers that the said timelines fall partly within working hours and lunch hour and are highly disruptive of working hours and would take away the employee's lunch hour and were therefore untenable to the University.
10. Nonetheless, the Claimant continued engaging the University staff on several occasions between the years 2018 and 2024 when the Claimant persuaded the Respondent staff to join the trade union.
11. He is aware that between 30th July 2024 and 10th August 2024, the Claimant successfully recruited 20 members of the University staff to join its fold and forwarded their names to the University management for deduction of 1.5% of their salary on a monthly basis and for the said deductions to be remitted to the Claimant Union.
12. According to Mr. Bakari, out of the 20 members of the Respondent staff who were recruited to join the union, only 6 managed to pay the union subscription fees and are duly recognized by the University as members of the Claimant Union.
13. Mr. Bakari contends that the Claimant moved this Court 9 days after the last member of the Respondent's staff was recruited into the union for orders that the University be compelled to remit deductions to the Applicant even before the right for deductions had crystallized.
14. In Mr. Bakari's view, it is evident that the Claimant Union has had access to the Respondent's premises for the purpose of carrying out recruitment exercises.
15. Mr. Bakari has further contended that the allegation that the Respondent has been calling and threatening its staff who joined the Claimant Union is false and misleading.



16. Mr. Bakari asserts that the Claimant's Union representatives have in the recent past, not only held meetings with the University Staff but also with the University Management.
17. He is advised by the University's advocates which advice he verily believes to be sound that the Claimant Union has the right to access the University staff affiliated with it subject to the bounds and delimitations set out under Section 56(2) of the *Labour Relations Act*.
18. Mr. Bakari maintains that since the recruitment of the University staff to the Union on various dates between 30th July 2024 and 10th August 2024, no member of staff has been victimized or subjected to disciplinary action on account of joining the trade union.
19. He verily believes that the allegation of victimization is unfounded and only calculated at casting aspersions on the University and creating an imaginary rift with its staff for the selfish benefit of the trade union.
20. In Response to the Respondent's Replying Affidavit, the Claimant filed a Further Affidavit sworn by Peter Emisembe Owiti in which he deposes that the alleged withdrawal of the recruited members is not in line with Section 48 of the *Labour Relations Act*.
21. With regards to access, Mr. Owiti avers that the Claimant has been recruiting members from outside the Respondent's premises.

Submissions

22. The Application was canvassed by way of written submissions. Both parties filed written submissions which the Court has given due consideration to.

Analysis and Determination

23. From the face of the Application, it is evident that the Court is being called to determine the following issues:
 - i. Deduction and remittance of trade union dues from the Respondent's employees to the Claimant Union;
 - ii. Whether there is a case of victimization of the Claimant's members on account of their union membership; and
 - iii. Access to the Respondent's premises by the Claimant's union representatives.

Deduction and remittance of trade union dues

24. It is not in dispute that the Claimant Union has recruited some employees of the Respondent into its membership. In this regard, the Respondent has admitted that the Claimant Union recruited 20 members and to this end, forwarded their names to the University management for deduction of their salary on a monthly basis and for the same to be remitted to the Claimant Union. Indeed, the Respondent exhibited a list of the employees who joined the Claimant's membership.
25. The Respondent's contention is that the members of staff who had initially joined the Claimant Union have since withdrawn their membership from the Union hence the Application has been overtaken by events.



26. Despite the Respondent's assertions, there is no evidence of such withdrawal by its staff from the Claimant's Union membership. Indeed, there is no notice of resignation by any of the said employees from the Claimant Union as contemplated under Section 48(6) of the Labour Relations Act.
27. Further, there is no evidence that the Respondent had forwarded copies of the resignation notices to the Claimant Union as required under Section 48(8) of the Labour Relations Act.
28. In light of the foregoing, it is evident that the Respondent's assertions that employees who had joined the Claimant Union had withdrawn their membership have not been substantiated.
29. The Constitution and the Labour Relations Act acknowledges and guarantees freedom of association, which includes the right of an employee to belong, or not belong to a trade union.
30. In this regard, the right to form, join or participate in the activities and programmes of a trade union is guaranteed and protected under Article 41(2) (c) of the Constitution.
31. Payment of union dues by members, is an obligation that goes hand in hand with the right to join a trade union. In this regard, Section 48(2) and (3) of Labour Relations Act 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.
3. An employer in respect of whom the Minister has issued an order under subsection (2) shall commence deducting the trade union dues from an employee's wages within thirty days of the trade union serving a notice in Form S set out in the Third Schedule signed by the employees in respect of whom the employer is required to make a deduction.
32. In essence, once an employee is recruited to a union and signs a check-off form, an employer is required to commence deduction and remittance of union dues for the recruited employee within 30 days of being served with the said check off forms.
33. It is worth pointing out that Section 48(3) aforementioned, is couched in mandatory terms hence it is not up to the employer to elect whether or not to comply.
34. Accordingly, the Respondent in this case is mandated to effect union dues deductions from its employees who have signed up for membership from the Claimant Union and subsequently, remit the same to the Claimant's gazetted bank account.

Whether there is a case of victimization of the Claimant's members on account of their union membership

35. The Claimant is apprehensive that most of the Respondent's staff are afraid of victimization upon joining the Union. To this end, the Claimant has cited a number of instances in other institutions where they allege employees were victimized on account of their union membership.



36. The Respondent has refuted the Claimant's assertions and averred that since the recruitment of the University staff to the Union on various dates between 30th July 2024 and 10th August 2024, no member of staff has been victimized or subjected to disciplinary action on account of joining the union.
37. It is notable from the record, that there is no evidence from the Claimant's end that any of its members has faced victimization or has been threatened on account of their union membership. As such, the Claimant's apprehension is unfounded.
38. This notwithstanding, I wish to point out that victimization of an employee on account of their union membership is a direct violation that goes to the heart of Article 41(2) (c) of *the Constitution* and the constitutional right to associate under Article 36 of *the Constitution*. This is an inalienable right that cannot be taken away. Therefore, an employee who wishes to join a trade union should not be subjected to any form of victimization or threat.
39. Be that as it may, as the Court has not discerned any evidence of victimization of the Claimant's members by the Respondent on account of their union membership, the Court will not issue any orders to that effect.

Access to the Respondent's premises by the Claimant's Union representatives

40. The Claimant has averred that the Respondent's management refused to grant it permission to access the Respondent's premises for purposes of recruiting members to the Union.
41. Refuting this assertion, the Respondent contends that it has held meetings in the past with the Claimant's Union representatives. Further, the Respondent has questioned how the Claimant succeeded in recruiting members from its staff without access.
42. In rejoinder, the Claimant has averred that these members were recruited from outside the Respondent's premises.
43. From the Respondent's Replying Affidavit, it is apparent that it is not averse to permitting the Claimant Union access to its premises subject to the limitations under Section 56(2) of the *Labour Relations Act*.
44. Whereas Section 56 (1) of *Labour Relations Act*, enjoins employers to grant reasonable access of union officials, to its premises, Section 56(2), allows an employer to impose reasonable conditions as to "the time and place of any rights granted" to avoid undue disruption of operations or in the interest of safety. Connected to this, an employer may also require officials or trade union representatives requesting access to provide proof of their identity and credentials.
45. Fundamentally, access to the employer's premises may be granted to a trade union with reasonable restrictions.
46. In light of the foregoing, I find no reason to decline the orders sought by the Claimant Union to this extent.

Order

47. In the final analysis, the Court allows the Application dated 19th August 2024 in the following terms:
 - a. The Respondent do forthwith commence deductions of union dues from its members of staff who have duly signed Form S and acknowledged union membership to the Claimant union and remit the said dues to the Claimant's gazetted bank account.



- b. The Respondent is hereby directed to allow the Claimant Union access to its members of staff in its premises for purposes of recruitment subject to the same taking place outside official working hours or if during working hours, the same should not interfere with the operations of the Respondent. The officials or trade union representatives of the Claimant requesting access to the Respondent's premises to provide the Respondent with proof of their identity and credentials.

48. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JANUARY 2025.

.....

STELLA RUTTO

JUDGE

Appearance:

For the Claimant/Applicant Mr. Owiti (Union Rep)

For the Respondent Ms. Akinyi

Court assistant Millicent

Order

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

