



**Public Transport Operators Union v Kariobangi Matatu Owners Sacco;
National Transport and Safety Authority (Interested Party) (Cause
E143 of 2022) [2025] KEELRC 240 (KLR) (31 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 240 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E143 OF 2022
JW KELL, J
JANUARY 31, 2025**

BETWEEN
PUBLIC TRANSPORT OPERATORS UNION CLAIMANT
AND
KARIOBANGI MATATU OWNERS SACCO RESPONDENT
AND
NATIONAL TRANSPORT AND SAFETY AUTHORITY . INTERESTED PARTY

JUDGMENT

Claimant – Joseph Ndiritu Union Chairman

Respondent- Lesinko Njoroge & Gathogo Advocates

1. The claimant was a registered trade union in the public transport sector and brought claim against the respondent alleging a trade dispute and seeking for the following reliefs:-
 - a. That the Respondent be and is hereby directed to forthwith arrange to commence the Consultative Meetings with the claimant herein with a view to having parties eventually sign the Collective Bargaining Agreement, the Recognition Agreement having been attested to by the said Parties.
 - b. That the respondent be and is hereby directed to continue deducting and remitting the Union dues from the members who may have subscribed to become the members of the Applicant Trade Union in accordance to the Check-off Forms in Place.
 - c. That the respondent be and is hereby directed to remit all the arrears of the unremitted Union dues to date from his own coffers in accordance to the provisions of the law.



- d. That any other directives as may be deemed fit to be issued by the court, in reparations with respect to the violated applicant and grievant's rights.
 - e. That the costs of the Claim be provided for.
2. The suit was verified by affidavit sworn on 2nd March 2022 by Fenus Okonji who stated to be the Secretary General of the claimant union. He produced the claimant's certificate of registration, letter dated 6th May 2015 addressed to the parties by the Ministry of Labour on a reported trade dispute which the labour officer stated to be, "refusal by the employer to remit union dues for ninety one (91) employees who are members of the union." Also produced was check-off forms signed on various dates between the years 2021 and 2022 and at pages 24-26 of the claimant's bundle was the check-off forms signed in 2015. Unsigned notice of employer authorizing deduction addressed to the chairman of the respondent was also produced. The claimant produced documents of 2015 where it appeared that the trade dispute was before a conciliator and parties signed a memorandum of agreement on deductions and remittance of dues and agreement to sign a recognition agreement on the 3rd July 2017 (at page 29 of the claimant's bundle). The claimant further produced letter dated 21st September 2015 addressed to members of the respondent by the Sacco Chairman stating that due to National Transport Safety Authority directives all drivers and conductors are supposed to be employed by the Sacco (page 31 of the Claimant's bundle of documents).
 3. The claimant further produced conciliation documents for 2016 on reported trade dispute for refusal to remit union dues (pages 32-33). Vide letter dated 22nd April 2016 the conciliator recommended the respondent to deduct and remit the union dues for all claimant's union members (page 34). The claimant vide letter dated 16th May 2016 raised a complaint with the Respondent on one of its members upon termination of services alleging victimization following unionisation (page 56).

Response

4. The respondent filed response dated 15th June 2023 to the claim. Key aspects of the defence was to the effect that the respondent was not aware that 209 of its alleged employees were claimant's employees. The respondent was not aware whether the allege employees voluntarily signed the check-off forms. That Mwangi Karani, the Sacco secretary who is stated to have signed the memorandum of agreement has since denied the same. The Respondent had to undertake diligence before deducting any funds from the alleged salaries of its employees as it doubted the validity of the check-off forms.
5. On the said employment of members of the claimant, the respondent denied employing the said members stating their members pay their drivers and conductors according to own arrangements. That drivers and the conductors might be engaged on a daily basis by the owners and the uniqueness of the business was that the driver and the conductors terminate engagement without formal notice. The respondent said the check-off lists of 2015 were old and it was unfair to demand backdated union dues. That it had been collecting NHIF and NSSF funds on behalf of the owners of the PSVs under its Sacco. That the funds are then given to the respective drivers and conductors who voluntarily make payments using own mobile phones. The respondent stated that this was more of social responsibility.
6. The Respondent further relied on the witness statement sworn by Benard Njoroge Chuaga on the 15th June 2023 who stated he was the Sacco Chairman and produced as its evidence the members' register, PSV Drivers' list and PSV conductors' list. He said the claimant had produced an old check-off list. The witness statement of Mwangi Karanu dated 2nd October 2023 was to the effect that he was the Secretary of the respondent between 2013 and 2017. He denied having signed the memorandum of



agreement dated 2nd July 2015 and the recognition agreement dated 5th August 2015 as produced by the claimant.

7. The respondent filed its list of documents dated 7th September 2023 being Authority to plead granted to Benard Chuaga(KMOS-1), Respondent's members' registers(KMOS-2), PSV Drivers' list (KMOS-3 extracted from NTSA portal) and PSV Conductors' List (KMOS-4extracted from NTSA portal)

Reply to response.

8. The claimant filed reply to the response dated 3rd October 2023 and stated that on the claim of the respondent not being aware of the 209 recruited employees, the statutory document was Form S (check-off forms) which it stated were acknowledged by the respondent and produced in court. That the respondent had produced documents to effect that the drivers and conductors are employees. that the said names had been filed form the regulator portal designating them as employees and the respondent as at the employer. that deduction of dues was to be within 30 days of receipt of Form S by the respondent. The Respondent produced samples of the drivers' employment cards issued by the respondent in conjunction with the regulator NTSA which indicated the respondent as employer.

Hearing

9. The matter was heard vide viva voce evidence. The claimant's CW1 as Joseph Ndiritu(also the union representative) who stated he was the chairman of the claimant since elections of 2021. He stated that after 2012 the drivers under NTSA were now under Sacco (respondent)and not individual Matatu (Public Service Vehicles) owners and relied on the produced employment badges. During cross-examination, Ndiritu confirmed that the conductors and drivers are employees of the Sacco(respondent). For the drivers to be members they had to apply for membership. The membership fee was Kshs. 100, members are issued a membership badge upon registration, and the member must have a badge issued by NTSA. They had 209 members and relied on the check-off forms presented for the period in the years 2015, 2021 and 2022. Some of the drivers' names extracted from the NTSA portal by the respondent matched those in the check-off forms. He said the check-off forms were received by the Sacco on 2nd June 2015 and that the members would notify them if they left employment.
10. Justice Ocharo Kebira was transferred and this court took over the defence case heard on the 2nd October 2024. The defence called RW1, Bernard Njoroge Chuaga, who informed the court he was the current chairman of the respondent. He adopted his witness statement of 15th June 2024 as his evidence in chief and produced documents under list of documents dated 17th September 2021 D-exh 1-4. He filed a certificate of electronic evidence dated 25th June 2024. RW1 during cross-examination by Mr. NdIritu of the union, denied the existence of a recognition agreement. He stated there were no records with the union. He admitted they collect Kshs. 100 for NHIF as required by NTSA which is given by the Motor Vehicle per day and at the time of payment they load the money on the driver's phone for payment. The collection of the Kshs.100 is according to an agreement with the owner of the Motor Vehicle and is remitted by the driver. They do not remit the money directly to NHIF for reason of convenience.
11. RW1 admitted he received the check-off forms. The Sacco received the check-off forms on the 17th of June 2015 but no action till he became chairman in 2019 when the union started following up, they decided to go to court as there was no agreement as purported.



12. RW2 was Mwangi Karanu who told the court he was the former secretary of the Respondent /Sacco and left in 2017. He adopted his witness statement dated 2nd October 2024 as his evidence in chief. He told the court he saw the recognition agreement and memorandum of agreement for the first time from the advocate. He denied signing before labour office on the 2nd July 2015 or signing the agreements. He denied the signature in the agreements.
13. The parties filed written submissions after the hearing.

Determination

Issues for determination

14. The claimant identified the issues for determination in the claim to be:-
 - a. Whether the respondent as an employer in the strict sense of the *Labour Relations Act*, the *Employment Act* and the NTSA Act 2012 and other laws operationalising the supreme law *the Constitution* of Kenya 2010.
 - b. Whether the respondent ought to deduct and remit trade union dues to the claimant union
 - c. Whether the respondent ought to recognise the claimant trade union by way of Recognition Agreement as is the mandatory provision of the law.
15. The respondent identified the issues for determination in the claim to be:-
 - i. Whether the Respondent is required to deduct and remit union dues to the Trade Union.
 - ii. Whether the Respondent is required to deduct and remit union dues in arrears to the Trade Union
 - iii. Whether this Honourable Court ought to compel the Respondent to engage in consultative meetings with the Claimant.
16. The court having analysed the facts as above finds the issue for determination-
 - i. Whether the respondent as an employer in the strict sense of the *Labour Relations Act*, the *Employment Act* and the NTSA Act 2012 and other laws operationalising the supreme law *the Constitution* of Kenya 2010.
 - ii. Whether the respondent ought to deduct and remit trade union dues to the claimant union and remit arrears from own coffers.
 - iii. Whether to direct the respondent to arrange to commence consultative meetings with the applicant with a view of parties eventually to sign collective bargaining agreement.

Whether the respondent as an employer in the strict sense of the *Labour Relations Act*, the *Employment Act* and the NTSA Act 2012 and other laws operationalising the supreme law *the Constitution* of Kenya 2010.

Claimant's submissions

14. The claimant relied on the provisions of section 5 of the National Transport and Safety Authority regulation No. 33 of 2012 which designated the respondent as employer of drivers and conductors among others staff in the public transport service and obliged the respondent to keep a list of staff, have a code of conduct of the staff and job description which are all functions of employers. That the



respondent has in place the said code of conduct. That RW1 confirmed the deduction of NHIF dues was in compliance with statutory deductions requirements. The court in the analysis of the evidence observed that the claimant produced a sample of badges issued to its members by the respondent. The Respondent was stated as the employer.

Respondents' submissions

17. On this issue, it was the Respondent's position that it does not offer employment to the Claimant's alleged members. That the Respondent does not exercise control or direction over the motor vehicle's owners, drivers and/or conductors. The motor vehicle owners pay their respective drivers and conductors according to the specific arrangements that they have amongst themselves. In the circumstances, it should be noted, and it indeed came out in the Respondent's evidence, that the dynamic nature of the matatu business is such that drivers and conductors might be engaged on a daily basis, terminable at the end of the day upon receipt of funds agreed with the respective motor vehicle owners.
18. The Respondent submitted that, without prejudice to the above, the Respondent is cognizant of the provisions of Regulation No. 5 of the National Transport and Safety Authority Operation of Public Service Vehicles) Regulations, *Legal Notice 23 of 2014* which provides that: "(1) A person desirous of operating public service vehicles shall be a member of a body corporate which shall— (a) be licensed to operate if the body corporate owns a minimum of thirty serviceable vehicles registered as public service vehicles or in respect to which an application for a licence has been or is to be lodged with the Authority; (b) have in its employment a staff complement which must include at a minimum— (i) a driver in respect to each public service vehicle; (ii) an inspector for each route on which the public service vehicle is intended to operate; (iii) an office manager; (iv) an accounts clerk; and (v) a qualified mechanic or a contract under which the services of a mechanic are outsourced; (c) have in place a code of conduct approved by the Authority governing its employees, agents and sub-contractors; (d) have in place a documented management system, safety management system based on ISO 39001:2012 "Road Traffic Safety Management Systems" or equivalent and customer complaints handling system; (e) comply with labour laws and regulations including in respect to statutory deductions, health and safety of the workplace, Work Injuries Benefits Act (Cap. 236) insurance, statutory leave days and written contracts of employment for staff" (Emphasis supplied). That by dint of the aforesaid Regulation No. 5, the Respondent is, for purposes of the operation of a public service vehicle, deemed to be the employer of the drivers of the public service vehicles operated by the owners constituting its members.

Issue 1. Decision

19. The court applies the written law as it is and not what the users interpret it to mean. The respondent has acknowledged the provisions of the law stating it is the employer of the drivers and conductors as recruited by the claimant by submitting as follows: "...The Respondent is cognizant of the provisions of Regulation No. 5 of the National Transport and Safety Authority Operation of Public Service Vehicles) Regulations, *Legal Notice 23 of 2014* which provides that: "(1) A person desirous of operating public service vehicles shall be a member of a body corporate which shall— (a) be licensed to operate if the body corporate owns a minimum of thirty serviceable vehicles registered as public service vehicles or in respect to which an application for a licence has been or is to be lodged with the Authority; (b) have in its employment a staff complement which must include at a minimum— (i) a driver in respect to each public service vehicle; (ii) an inspector for each route on which the public service vehicle is intended to operate; (iii) an office manager; (iv) an accounts clerk; and (v) a qualified mechanic or a contract under which the services of a mechanic are outsourced; (c) have in place a code of conduct approved by the Authority governing its employees, agents and sub-contractors; (d) have in place a



documented management system, safety management system based on ISO 39001:2012 "Road Traffic Safety Management Systems" or equivalent and customer complaints handling system; (e) comply with labour laws and regulations including in respect to statutory deductions, health and safety of the workplace, Work Injuries Benefits Act (Cap. 236) insurance, statutory leave days and written contracts of employment for staff." That is the law.

20. The Court holds that under the law, Regulation No. 5 of the National Transport and Safety Authority Operation of Public Service Vehicles) Regulations, [Legal Notice 23 of 2014](#) and vide documents before the court the Respondent is the employer of the claimant's members who are its employees.

Issue 2. Whether the respondent ought to deduct and remit trade union dues to the claimant union and remit arrears from own coffers.

The claimant's submissions

21. The claimant relied on the evidence before the court as analysed above of having recruited employees of the respondent and submitted Form S (check off forms since 2015 in accordance with the provision of section 48 of the [Labour Relations Act](#) and further stated there was no compliance. This position of non-compliance was admitted by the respondent who stated that its members had not approved the deductions.

The respondent's submissions

22. The Respondent further to its pleadings and evidence submitted that in the case of Kenya National Union of Nurses v County Public Service Board Homabay [2018] eKLR the Honourable Court in its ruling stated that:- "...Deduction and remittance of union dues is not based on recognition agreement but on Forms S which as I have stated above is the authority for deduction of union dues from the salary or wages of an employee." In the case of Kenya Union of Commercial Food and Allied Workers vs Mitra Enterprises Limited & Another [2021] eKLR the Honourable Court in its Judgement stated as follows: "34... A reading of Section 48 (2) reveals that recognition and deduction of remission of Union dues have separate and distinct requirements. For deduction and remission of union dues, all a trade union needs to do, is recruit at least more than 5 employees, which action obligates an employer to deduct and remit union dues. 35... This position was affirmed in the case of Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals & Allied Workers (Kudheihia) v British Army Training Unit Kenya [2015] eKLR, where Mbaru J held:

"The question of deduction of union dues and that of recognition of the Union by an employer are separated in law. Under section 48 of the [Labour Relations Act](#), an employer is bound to remit all Union dues deducted to the Union account irrespective of recognition as under this part, where there are more than 5 employees in the membership of a Union, the employer should make deductions and remit to the Union. The deduction and remittance of Union dues from employees who have acknowledged union membership should be based on the Minister for Labour making an appropriate order through Kenya Gazette indicating the account to which such Union dues should be remitted. It does not require a recognition agreement between the Union and an employer. The duty on the Union is to submit to the employer the names and identity card numbers of the employees through the check-off forms."

23. The Respondent contended that having regard to the dynamic nature of employment of drivers and conductors within the Respondent organization, and further]the following facts established at the hearing of this suit:- From the onset, the Claimant did not establish the minimum requirement of five



(5) of the Respondent's employees who were members of the Claimant's union. The Respondent, vide its Exhibits 3 and 4 in the List and Bundle of Documents, supplied to the Claimant and to this Honourable Court an updated and comprehensive list of the drivers and conductors in its employment as at 7th September 2023.

24. The Respondent invited the Court to note that the Claimant did not identify, either in its evidence or its written submissions, any five of the Respondent's employees as per the Exhibits provided whose names and details were captured in the Forms S supplied to this Court by the Claimant in support of its claim. The Court to take note that the updated list of employees supplied by the Respondent bears a total of 167 names. The Respondent asked:- How can the Claimant then allege that its Forms S contained a schedule of 209 members who were employed by the Respondent? The Respondent submitted that the list provided by the Forms S did not contain a true account of the Claimant's purported members who are employed by the Respondent. In any event, the Claimant failed to lead evidence to establish that the purported 209 alleged employees captured in its Forms S were still in the employment of the Respondent. That in light of the Claimant's failure to establish the minimum requirement set out in Section 48 (2) of the *Labour Relations Act*, Cap 233 Laws of Kenya, the Respondent ought not to be compelled to deduct and remit any union dues to the Claimant as alleged or at all

Decision on Issue 2

25. The claimant's case was that it complied with the law by recruiting employees of the respondent and submitting check-off forms S to the Respondent in the years 2015, 2021 and 2022 (pages 18-26 of the claimant's bundle of documents). The respondent's RW1 (Chairman) admitted to having received the check-off forms for 2015. He became chairman in 2019. Check-off forms S were also produced for 2021 to 2022. On the issue raised in submissions by the respondent on compliance the provisions of section 48 (2) of the *Labour Relations Act* to wit:-

“

48(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 ..”

The court returned that it was the Minister to confirm the compliance before it issued the order to deduct which Order was not an issue before the court. The court further took note of the recommendation on the trade dispute of the Conciliator's letter dated 22nd April 2016 (page 34) where it was stated:-

“ after thorough scrutiny of the documents submitted to the undersigned conciliator I am convinced beyond any reasonable doubt that the claimant is being denied union dues of their bonafide members. The respondent has deliberately refused to remit the union dues without any reasonable cause..”

The conciliator recommended immediate deductions. The issue raised of compliance with the minimum 5 employees alleging high turnover is a moot point in the circumstances.

26. The Court recognizes the right of the employees to join a union and to enjoy the benefits of unionization offered by the union which include representation at the shop floor and collective bargaining. The right is anchored in international law, *the Constitution* of Kenya and statutes. See Article 8 International Covenant on Economic, Social and Cultural Rights which states:-



“1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;” ; The International Labour Organization Convention 87 (1948), Right to Organize and Collective Bargaining: Convention 98 (1949); Article 41 of *the Constitution* to wit:

”1) Every person has the right to fair labour practices.

(2) Every worker has the right—

(a) to fair remuneration;

(b) to reasonable working conditions;

(c) to form, join or participate in the activities and programmes of a trade union; and

(d) to go on strike.

(3) Every employer has the right—

(a) to form and join an employers organisation; and

(b) to participate in the activities and programmes of an employers organisation.

(4) every trade union and every employers’ organisation has the right—

(a) to determine its own administration, programmes and activities;

(b) to organise; and

(c) to form and join a federation.

(5) Every trade union, employers’ organisation and employer has the right to engage in collective bargaining.” The *Labour Relations Act* section 4 to wit:-

“ 4. Employee’s right to freedom of association (1) Every employee has the right to—

(a) participate in forming a trade union or federation of trade unions;

(b) join a trade union; or and section 5.

“Protection of employees (1) No person shall discriminate against an employee or any person seeking employment for exercising any right conferred in this Act.” The Court must enforce the foregoing rights in its application of the law.



27. The foundation of the relationship between workers and unions is membership fees as envisaged under section 48 of the *Labour Relations Act* to wit:-

‘ 48.

1) In this Part “trade union dues” means a regular subscription required to be paid to a trade union by a member of the trade union as a condition of membership.”

28. The procedure of membership is then prescribed under the section as follows:-‘

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.

(4) The Minister may vary an order issued under this section on application by the trade union.

(5) An order issued under this section, including an order to vary, revoke or suspend an order, takes effect from the month following the month in which the notice is served on the employer.

(6) An employer may not make any deduction from an employee who has notified the employer in writing that the employee has resigned from the union.

(7) A notice of resignation referred to in subsection

(6) takes effect from the month following the month in which it is given.

(8) An employer shall forward a copy of any notice of resignation he receives to the trade union.”(emphasis given)

29. The Court holds that by failing to make deductions after receipt of Check-off forms of the members of the claimant, the respondent was in violation of the constitutional right of the employees to unionise and benefits from their membership to the union to wit:-

“Article 41 of *the Constitution* to wit: ”

(1) Every person has the right to fair labour practices.

(2) Every worker has the right—

(a) to fair remuneration;

(b) to reasonable working conditions;

(c) to form, join or participate in the activities and programmes of a trade union; and



- (d) to go on strike.
- (3) Every employer has the right—
 - (a) to form and join an employers organisation; and
 - (b) to participate in the activities and programmes of an employers organisation.
- (4) Every trade union and every employers’ organisation has the right—
 - (a) to determine its own administration, programmes and activities;
 - (b) to organise; and
 - (c) to form and join a federation.
- (5) Every trade union, employers’ organisation and employer has the right to engage in collective bargaining.” The right is also anchored in international law as cited above.

30. The court found no viable reason has been brought to court on the non-deduction of the dues and remittance to the union. The rights of the employees cannot be pegged to the consent of the members of the respondent as alluded by RW1. Once FORM S is received by the employer and the union has complied with the provisions of section 48 of the *Labour Relations Act* (supra) the employer has no choice but to comply. The respondent having received the Check-off Form(S) it ought to make the union deductions as authorised by the Minister and remit to the union for all current employees members of the claimant union. The prayer on arrears is rejected as the dues are deducted from wages of the employee according to section 48 of the *Labour Relations Act* (supra) and cannot be backdated without the consent of the employee. There was no such consent before the trial court. The court rejects the invitation to order payment of arrears of any undeducted union dues from the coffers of the Respondent.

Issue 3. Whether to direct the respondent to arrange to commence consultative meetings with the applicant with a view of parties eventually to sign collective bargaining agreement.

31. The claimant relied on a document dated 2nd July 2015 signed by the parties before the Conciliator. It further produced a document said to be a recognition agreement between the parties signed on the 5th August 2015. On behalf of the respondent, it was indicated Joseph Ndirangu Karanu signed. The said Karanu (RW2) swore an affidavit dated 2nd October 2023 and denied having signed the document. RW1 stated he had no union records, save for the checkoff forms of 2015 he acknowledged in the record of the Sacco. The claimant stated that it had met the simple majority and section 54 of the *Labour Relations Act* having recruited 209 employees of the Sacco and ought to be recognised.

Respondents’ submissions

32. The Respondent submitted that the Claimant had not established that it had reached a simple majority of members constituting the Respondent’s unionisable employees. No evidence was led to prove which of the Respondent’s current 167 employees were members of the union. That the absence of evidence to that effect, the Respondent ought not to be compelled to engage the Claimant in negotiations aimed at entering a collective bargaining agreement. Such compulsion would be in blatant violation of the provisions of Section 54 (1) aforementioned.



Decision on issue 3

33. section 54 of the [Labour Relations Act](#) to wit :-

- (1) An employer, including an employer in the public sector, shall recognise a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees.
- (2) A group of employers, or an employers' organisation, including an organisation of employers in the public sector, shall recognise a trade union for the purposes of collective bargaining if the trade union represents a simple majority of unionisable employees employed by the group of employers or the employers who are members of the employers' organisation within a sector.
- (3) An employer, a group of employers or an employer's organisation referred to in subsection (2) and a trade union shall conclude a written recognition agreement recording the terms upon which the employer or employers' organisation recognises a trade union."

34. The claimant stated that the union had already signed a recognition agreement and produced the document at trial at pages 22-29 of reply to replying affidavit dated 11th April 2022 by Fred Okonji Secretary General. The Respondent denied having executed the agreement through Karanu who swore affidavit dated 2nd October 2023 and testified as RW2. He was the secretary of the Respondent at the material time and exited office in 2017. He vehemently denied having signed the filed copy of the recognition agreement.

35. The court finds that whereas a recognition agreement was produced by the claimant the same was disputed. The court finds that the said recognition agreement could only be set aside by the National Labour Board under section 54(5) of the [Labour Relations Act](#) to wit :-

- "(5) An employer, group of employers or employers' association may apply to the Board to terminate or revoke a recognition agreement."

The Respondent ought to have filed to the Board an application to revoke the recognition agreement if it disputes having the execution it. That had not been done. For now, the court finds there is a recognition agreement in place between the parties.

36. Turning to the prayer by the claimant in the claim for the court that:-

"That the Respondent be and is hereby directed to forthwith arrange to commence the Consultative Meetings with the claimant herein with a view to having parties eventually sign the Collective Bargaining Agreement, the Recognition Agreement having been attested to by the said Parties."

The signing of a Collective Bargaining Agreement is a voluntary process. The process is as provided under section 57 of the [Labour Relations Act](#) to wit:-"

57. Collective agreements

- (1) An employer, group of employers or an employers' organisation that has recognised a trade union in accordance with the provisions of this Part shall conclude a collective agreement with the recognised trade union setting out terms and conditions of service for all unionisable employees covered by the recognition agreement.



- (2) For the purpose of conducting negotiations under subsection (1), an employer shall disclose to a trade union all relevant information that will allow the trade union to effectively negotiate on behalf of employees.
- (3) All the information disclosed by an employer as specified in subsection (2) is confidential and shall not be disclosed by any person to a person who is not engaged in the negotiations.
- (4) An employer is not required to disclose information that—
 - (a) is legally privileged;
 - (b) the employer cannot disclose without contravening a prohibition imposed on the employer by any law or an order of any court;
 - (c) if disclosed, may cause substantial harm to the employer or employee; or
 - (d) is private personal information relating to an employee, unless an employee consents to the disclosure of that information.
- (5) If there is a dispute about what information is required to be disclosed in accordance with the provisions of this section, any party to the dispute may, in writing, refer the dispute to the Minister for conciliation.
- (6) If a dispute remains unresolved, after it has been referred to the Minister under subsection (5), any party to the dispute may refer the dispute to the Industrial Court under a certificate of urgency.
- (7) In any dispute about an alleged breach of confidentiality, the Industrial Court may order that the right to disclosure of information be withdrawn for a period specified by the court.
- (8) No person shall disclose any confidential information disclosed under this section to a person who is not a party to those negotiations.”

36. From the foregoing provisions of section 57 of the *Labour Relations Act*, it is apparent there exists an alternative remedy to the dispute on the process of negotiating a Collective Bargaining Agreement which ought to be invoked before resorting to court. The claimant did not present any evidence before the court of any trade dispute having been sent to the Minister on the Collective Bargaining Agreement negotiations. The court holds it is premature to issue any directions on the process without compliance with the provisions of section 57.

37. The court declined to issue the directions sought by the Claimant for the said reasons.

Conclusion

38. The claim is allowed and Judgment is entered in favour in the Claimant against the Respondent as follows: -



- a. That the respondent is hereby directed to make deductions and continue deductions and remitting the Union dues as per the authority to deduct from the members who may have subscribed to become the members of the Claimant's Union in accordance with the Check-off Forms in place.
- b. The court awards the claimant reasonable costs payable by the respondent to cover the expenses in the litigation which the court awards at an all-inclusive figure of Kshs. 30,000 to be paid within 30 days of this Judgment.

39. Stay is granted for 30 days.

40. It is so Ordered.

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

JEMIMAH KELI,

JUDGE.

In the Presence of:

Court Assistant: Otieno

Claimant:- Joseph Ndiritu (Union- Chairman)

Respondent:- Otieno h/b Ndaiga

Interested party: - No appearance

