



**Kenya Engineering Workers Union v Abyssinia Iron and Steel Limited (Cause E013 of 2022) [2025] KEELRC 47 (KLR) (23 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 47 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E013 OF 2022  
M MBARŪ, J  
JANUARY 23, 2025**

**BETWEEN**  
**KENYA ENGINEERING WORKERS UNION ..... CLAIMANT**  
**AND**  
**ABYSSINIA IRON AND STEEL LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The issue in dispute is the respondent's alleged refusal to comply with Section 48 of the [Labour Relations Act](#) (LRA).
2. The claim is that the claim is a registered trade union catering to all unionisable employees in the engineering sector. The respondent has operations in Mombasa, Athi River, and Kisumu.
3. Parties have a Recognition Agreement.
4. The claim is that the claimant recruited employees in Abyssinia Iron and Steel Limited based on the respondent's Kisumu and Athi-River branches and forwarded check-off forms to the respondent, who has refused and declined to deduct and remit union dues. The claimant filed the matter at Kisumu ELRC, and the respondent was directed to comply with Section 48 of LRA, and it did comply for the Kisumu branch.

However, the Athi-River branch has not been compliant since July 2014, despite check-off forms being forwarded to the respondent.

5. The claimant recruited Top Steel Limited employees and forwarded the check-off forms to the employer, who declined to comply with Section 48 of the LRA. The claimant filed Mombasa ELRC Cause No.92 of 2021, and during the hearing, it was revealed that Top Steel Limited sold the entire business to the respondent.



6. The claimant applied to enjoin the respondent in the suit, but there were objections because they had not participated in the conciliations. The matter was withdrawn to allow parties to negotiate the remittance of union dues.
7. The claimant forwarded check-off forms to the respondent on 20 February 2020, but there has been no remittance of union dues. The respondent is in breach of Section 48 of LRA and Article 47 of *the Constitution*. The court has already issued orders in ELRC Cause No.759 of 2012 for payment of union dues. The parties have a Recognition Agreement dated 24 June 2016 that emanated from ELRC Cause No.74 of 2013 (Kisumu).
8. The claimant is seeking the following orders;
  1. The court issued an Order against the respondent to deduct and remit union dues immediately.
  2. The employer shall be compelled to pay union dues arrears of 2% of the total basic wage bill of all the union members since when she was reserved with check-off forms amounting to Ksh.1, 368,000 for Abyssinia Mombasa for 24 months and Ksh.612, 000 for Abyssinia Athi-River for 3 years plus COTU union dues and continuing accruing of Ksh.80, 471 monthly for Mombasa and Ksh.17, 000 for Athi-River from her pocket from the end of March 2022.
9. In evidence, the claimant called Francis Jirongo, the Coast Regional Secretary, who testified that he is responsible for recruiting members and addressing disputes in his region. Following the Recognition Agreement between the parties, he recruited 114 members from the unionisable employees in the respondent's service at the Mombasa plant. His colleague Robert Araka recruited 25 members at the Athi-River plant.
10. Jirongo testified that he knew that the recruited members were employees of the respondent. The check-off forms were submitted, but the respondent refused to deduct and remit trade union dues to the claimant.
11. Upon cross-examination, Jirongo testified that the Minister published the Gazette Notice for payments of union dues upon submission of check-off forms. Through a letter dated 20 February 2020, the claimant notified the respondent of the employees who had signed the check-off forms. In total, the claimant had 139 members, both in Mombasa and Athi-River plants. Of the 139 members, there is nothing to show that these are respondent employees save for the check-off forms. No pay slips are attached to confirm the place of employment or the employer. There are no letters of appointment.
12. In response, the respondent argues that the claimant is not the proper union to represent unionisable employees in its service. The respondent's business does not fall within the claimant's jurisdiction, and even if a Recognition Agreement has been executed between the parties, the respondent has no unionisable employees in its employment.
13. The claimant did not recruit unionisable employees as alleged. No check-off forms were submitted to the respondent, and as such, the claim for deduction and remittance of union dues should not arise. If any check-off forms were submitted, the listed persons are not the respondent's employees. The claim that there is a similar dispute in Kisumu ELRC is a clear admission that a competent court has determined the suit herein, hence res judicata.
14. The respondent was not a party in ELRC Cause No.92 of 2021 and hence cannot respond to such a matter. The suit was not withdrawn to allow for conciliation as alleged. The claimant realized it was trying to enjoin a non-suited party in the proceedings.



15. A Recognition Agreement cannot be used to effect union dues from non-union members. The court should dismiss the claim with costs.
16. In evidence, the respondent, Vivian Koigi, advocate and employee of the respondent, testified that the respondent is in the business of manufacturing iron and steel with plants in Athi-River, Kisumu and Mombasa. The respondent has no unionisable employees in its employment capable of representation by the claimant. No recruitment exercise has been undertaken by the claimant as alleged. The persons listed on the check-off forms produced by the claimant are not the respondent's employees. No court orders are issued against the respondent, leading to disobedience as alleged.
17. Upon cross-examination, the witness testified that the alleged agreement with the claimant before the conciliator related to an outsourced company and not the respondent. As alleged, there is no agreement on the deduction and remittance of union dues. There is no statutory requirement to remit any union dues on behalf of another legal entity. The outsourced company is a separate legal entity. The respondent has no legal standing to deduct or remit non-employee statutory dues. Where a third party contracts employees, such is the entity that makes statutory payments, not the respondent.
18. The recognition Agreement referenced by the claimant is with Abyssinia Iron and Steel Limited and Cause No.92 of 2019 related to Top Steel Kenya Limited. The respondent's Mombasa plant is registered as a distinct entity separate from other plants.
19. The respondent also filed a list of documents.
20. At the close of the hearing, both parties agreed and filed written submissions.

### **Determination**

21. The pleadings, evidence, and written submissions analyzed reveal issues that require determination: whether the court should direct the respondent to deduct and remit trade union dues to the claimant and whether the court should order and compel the respondent to pay union dues arrears of 2% of the total basic wage bill of all the union members from March 2022 from its account.
22. It is common cause that parties have a Recognition Agreement dated 24 June 2016.
23. The essence of a Recognition Agreement is to allow parties to move to the next level and phase of negotiating a collective bargaining agreement on terms and conditions of employment for unionisable employees. This is the basis of Section 54 of the LRA.
24. For union dues, every member of a trade union is required to remit trade union dues under Section 48 of the LRA. Where an employer is served with check-off forms concerning its employees who have joined a trade union, such an employer must deduct and remit union dues to the subject union. Where the employer fails to secure such right, the union has the right to demand such payments from the accounts of the employer who has contravened the LRA.
25. In this case, the respondent denied that the persons listed in the check-off forms submitted by the claimant are not its employees and that there are no unionisable employees in its ranks subject to representation by the claimant.
26. Upon the respondent's recognition of the claimant, having achieved the required threshold, there exists a good basis for claiming union dues. However, there are different dynamics on the shop floor. Employees leave for different reasons, and hence, there are constant changes. The claimant must keep hold of these dynamics and act accordingly. Constant updates of its members' lists are imperative.



27. Despite holding the Recognition Agreement, the daily changes on the shop floor must be accounted for.
28. The submitted check-off forms to the respondent were sent through a letter dated 20 February 2020, referenced by the claimant's witness. They related to 114 employees at the Kisumu and Nairobi plants. The letter does not list any employee of the respondent at the Mombasa plant. The letters were sent to the Kisumu and Nairobi Plants. They related to check off forms signed by the listed persons in August 2019.
29. The respondent analyzed these check-off forms. Of the 114 persons, 58 are unknown. Some have only one name, and others do not indicate when they joined the claimant union.  
  
Of the 114 listed persons, 31 are not employed by the respondent since they have either left employment, absconded duty, or had employment terminated.  
  
70 other persons, as listed by the claimant in the check-off forms, have been under a third party, Labor Planet or Real Labor. These are admitted as independent contracts that are outsourced to provide labour to the respondent; hence, there are no unionisable employees of the respondent on the shop floor.
30. The respondent filed records demonstrating outsourcing agreements with third parties, including Consolidated HR Solutions Limited, M/S JEO Investments, and Labour Planet International.
31. The claimant did not contest these records. This was an imperative invitation to counter-check with its members.
32. The court has analysed the records, the claimant's assertion of remittance of trade union dues, and the respondent's response that there are no unionisable employees in the respondent's service. The claimant has not discharged its burden on a balance of probabilities. The assertion that it has members employed by the respondent does not hold.
33. Cumulatively, the number of alleged members as of August 2019 has changed.
34. The claimant should return to the drawing board and confirm its members' employment with the respondent. In the interim, it should apply the provisions of Section 52 of the LRA, which requires the claimant's members to pay directly to their union of choice.

52. Direct payment of trade union dues

Nothing in this Part prevents a member of a trade union from paying any dues, levies, subscriptions, or other payments authorised by the trade union's constitution directly to the trade union.

35. This will suffice pending the claimant's verification of its membership records. Holding a Recognition Agreement is not sufficient. The claimant should constantly keep its members updated and, hence, keep up-to-date records.
36. The orders sought are without merit and the claim is hereby dismissed. The claimant shall meet costs due to the respondent.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 23 DAY OF JANUARY 2025.**

**M. MBARŪ**

**JUDGE**

**In the presence of:**



Court Assistant: Japhet

..... and .....

