



Kenya Union of Road Contractors & Civil Engineering Workers v Pride Enterprises Limited (Cause E078 of 2024) [2025] KEELRC 43 (KLR) (23 January 2025) (Judgment)

Neutral citation: [2025] KEELRC 43 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E078 OF 2024
JK GAKERI, J
JANUARY 23, 2025**

BETWEEN
**KENYA UNION OF ROAD CONTRACTORS & CIVIL ENGINEERING
WORKERS CLAIMANT**
AND
PRIDE ENTERPRISES LIMITED RESPONDENT

JUDGMENT

1. The Claimant commenced the instant suit by memorandum of claim dated 30th September, 2024 on 1st October, 2024, claiming that the Respondent had failed or refused to remit union dues from 23 employees who had acknowledged membership of the Claimant union in November 2023 and February 2024 despite a request to do so.
2. The Claimant prays for:
 - i. An Order directing the Respondent to deduct and remit to the Claimant union dues of its members as set out in the check-off forms.
 - ii. An Order directing the Respondent to pay all unremitted union dues from November 2023 from its accounts with interest and court rates.
 - iii. Costs of the suit.
 - iv. Any other relief this Court may deem just and fit.

Respondents case

3. It is the Respondents case that the respondent had no recognition agreement with the Claimant and was engaged in sale of road construction material such as Bitumen and was not involved in road



construction and is thus contesting whether the Claimant union is the proper union to represent its employees.

4. It denies that its employees at the Katani site acknowledged membership of the Claimant union, which had not avail its registration and constitution.
5. The Respondent admits that the Claimant sought to have a sensitization meeting in November 2023 which was followed by a demand to deduct union dues in respect of 20 employees and did not agree to do so.
6. The Respondent's case is grounded on the provisions of the [Labour Relations Act](#) but admits that conciliation efforts failed to resolve the dispute.
7. The respondent prays for dismissal of the Claimant's suit with costs.
8. On 30th October, 2024 when the matter came up for mention, Mr. Osicho for the union suggested that the suit be canvassed by way of written submissions but Mr. Miheso suggested a hearing.
9. In the absence of a consensus, a hearing date was fixed for 19th November, 2024 on which date Mr. Osicho informed the Court that he had no witness, a fact he was at all material times aware of having confirmed that he was ready to proceed at 10.01am, as none of the parties was present at 9:00am when the matter was called out.
10. Mr. Maganga for the Respondent proposed that the suit proceeds by way of written submissions and documentation on record as proposed by Mr. Osicho and directions on the filing of submissions were given.
11. To embellish its case, the Claimant filed Gazette Notice No.159 signed by the Cabinet Secretary for Labour and Social protection on 29th June, 2021 on deduction of union dues by employers from members of the union, written request to the Respondent to conduct a membership recruitment drive on 10th November, 2023, letter on deduction of union dues dated 20th November, 2023 with 20 names and a further letter dated 12th February, 2024 with 3 additional names.
12. Finally, the Claimant relies on the letter dated 23rd February, 2024 from the Chief Industrial Relations Officer on the appointment of a conciliator one Mr. Benard Ochieng and letter dated 5th or 6th June, 2024, and the certificate of unresolved trade dispute by the conciliator.
Puzzlingly, the Claimant did not file a witness statement.
13. The Respondent on the other hand filed the Claimants letter dated 20th November, 2023 on deduction of union dues and its memorandum to the conciliator dated 22nd May, 2024 and a witness statement by Sabina A. Mima whose statement generally replicates the respondents Reply/Defence to the memorandum of claim.

Claimant's submissions

14. On entitlement to union dues the union relies on the provisions of Section 48(2) and (3) of the [Labour Relations Act](#) to urge that it has not met the requirements and the Respondent is bound to deduct and remit all trade union dues.
15. Reliance is made on the decision in Tailors and Textiles Workers Union V Global Appearels EPZ Ltd [2019] eKLR. The decision in Kenya Chemical and Allied Union V Insight Management Consultancy Ltd [2018] eKLR was also cited to urge that the Respondent was obligated to commence deduction of union dues and remit the same to the Claimant.



16. As to whether the Respondent can bar unionisable employees from joining a trade union, reliance was made on the provisions of Article 41 of the Constitution of Kenya and Section 4 of the Labour Relations Act.
17. Reliance was made on the sentiments of Mbaru J. in KUDHEIHA V British Army Training Unit Kenya [2015] eKLR on the obligations of the trade union respecting deduction and remission of trade union dues, to urge that the dispute is grounded on Articles 41 and 36 of the Constitution of Kenya read together with Section 4 of the Labour Relations Act on the rights and freedom of workers which the Respondent was denying them.

Respondent's submissions

18. Concerning deduction and remitting of trade union dues to the Claimant, the Respondent submits that it has no recognition agreement with the union and was a supplier of road construction material not road construction and the Court ought to determine whether or not the Claimant is the correct union to represent the employees.
19. The Respondent urges that employees have no right to join a trade union whose membership clause does not cover the sector in which the employee works and the Claimant had not availed its constitution for the Court to interrogate the question.
20. The Respondent argues that it did not agree or accept to remit union dues.
21. It is common ground that the Claimant union requested for time to recruit members from the Respondent's employees in writing and appear to have visited the Katani site on Friday 10th November, 2023 or some other day facts the Respondent admits and thereafter the union requested the Respondent to deduct and remit union dues but the Respondent declined citing lack of recognition agreement, ministers Order, which is the proper union to represent its employees, absence of payroll numbers, did not consent to deduct union, dues consent of employees names not verified, Mr. Cheruiyot Rotich did not sign the form among others including absence of form S.
22. The respondent appears to be challenging the Claimants legitimacy to recruit its employees as members of the union, membership and other procedures.

The issues that commend themselves for determination are:

- i. Whether the non-availment of a witness statement by the Claimant impact on its case.
 - ii. Whether a recognition agreement is necessary for purposes of deduction of union dues.
 - iii. Whether the Claimants demand for union dues is sustainable and the attendant relief.
23. As regards the 1st issue it is trite law that pleadings are not normally evidence but allegations by the respective parties which derive life from the evidence adduced by the parties whether by word of mouth or in writing or they are expressly or implied admitted by the other party. They are also informative and set the outer limits of the case.
 24. See CMC Aviation Ltd V Crusair Ltd [1987] eKLR, Mary Wambui Kabugo V Kenya Bus Services Ltd [1997] eKLR, Miller V Minister of Pensions [1947] ALLER 373, Raila Amolo Odinga V IEBC & 2 Others [2017] eKLR, Kenya Commercial Bank Ltd V Sheikh Osman Mohammed CA No. 179 of 2010, Galaxy Paints Co. Ltd V Falcon Guards Ltd [2000] 2EA 385 and Geoffrey Kamau Ndicho & Another V Peter Muchiri Muruingi [2022] KEHC 2 (KLR) among others.



25. However, in instant case, the Claimant's non-availment of oral testimony is not fatal as it has availed documentary evidence which establish some of the allegations made including having requested for permission from the Respondent to recruit its employees as members of the union.
26. As to whether a valid recognition agreement is a prerequisite for deduction of union dues, the answer is in the negative for the reason that a recognition agreement between a trade union and an employer, group of employers or an employers organization serves the purpose of collective bargaining as ordained by the provisions of Section 54(2) of the [Labour Relations Act](#) which provides that:
- (1) An employer, including an employer in the public service, 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.
27. The foregoing position is fortified by the sentiments of Ndolo J. in Kenya Shoe and Leather Workers Union V Modern Soap Factory ELRC CC NO. 615 OF 2014 Judge stated.
- “To my mind, a trade union has many roles and although collective bargaining which is premised on recognition is a premiere one, the other roles such as association generally and representation in particular, are equally important. What is clear is that Section 54(1) of the [Labour Relations Act](#) creates no nexus between recognition and representation...
- To say that the right to representation must be preceded by recognition of the member's trade union is to lock out a whole body of employees who belong to minority trade unions, to say nothing about the ensuing onslaught on fair competition among trade unions.”
28. Rika J expressed similar sentiments in Kenya Shoe & Leather Workers Union V Falcon Tanners Ltd ELRCC NO. 826 of 2016.
29. In Modern Soap Factory Ltd V Kenya Shoe & Leather Workers Union [2020] eKLR, the Court of Appeal affirmed the decision of Ndolo J and held that:
- “...In our judgment, we can see no reason why a registered trade union whose constitution so empowers should not have standing to initiate a claim on behalf of its members and to represent its members in Court”.
30. Later in the same judgment, the Court stated as follows:
- “That said, whether an employee is a member of a union is a question of fact. Where there is a contest as to whether an employee is a member of a union evidence would be required to settle that question. It is not a matter amenable for determination on the basis of a Preliminary Objection”.
31. From the foregoing, it is surmisable that other than for purposes of collective bargaining, a trade union does not require recognition by an employer or group of employers or employer's organization to recruit members from the ranks of their unionisable employees and represent them in court as necessary.



32. In the instant case a recognition agreement was not necessary for the Claimant union to request for deduction and submission of union dues.
33. As to whether the Claimants demand for union dues is sustainable, the provisions of Section 48 of the *Labour Relations Act* are instructive as follows:
- (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.
 - (2) A trade union may, in the prescribed form, request the Cabinet Secretary 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 Cabinet Secretary 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 Cabinet Secretary 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.
34. In *Lochab Brothers Ltd V Transport Workers Union* [2024] KECA 965 (KLR), the Court of Appeal expressed itself as follows:
- “The purpose or consequence of signing a recognition agreement is to give the union a right to negotiate a collective bargaining agreement while deduction and remittance of union dues by an employer is founded on two things; first is a directive order issued by the minister and second, is service of Form S which contains the signatures of employees authorising deductions of union dues from their salaries”.
35. Nzioki Wa Makau J expressed similar sentiments in *Kenya County Government Workers Union V Nairobi Water & Sewerage Co. Ltd & National Union of Water & Sewerage Employees* [2022]



KEELRC 1122 (KLR) citing Rika J. in Kenya Concrete Structural Ceramic Tiles Wood Plys and Interior Design Workers Union V Wanxin Investments Ltd [2021] eKLR that:

“Deductions and remittances of trade union dues flows from relevant ministerial Order and check-off forwarded to the Respondent...”

36. Significantly, the Respondent denies that its employees working at the Katani site acknowledged membership of the Claimant union in November 2023 and February 2024.
37. As this is a contested issue it was incumbent upon the Claimant to adduce evidence to demonstrate when it recruited the employees as its members.
38. Although the Act does not require payroll numbers, it is evidence to show that the information was provided by the employee for purposes union membership.
39. It is true as the Respondent avers that Cheruiyot Rotich did not sign the check off form yet his name is included on the list of the 23 employees.
40. As held in *Modern Soap Factory V Kenya Shoe and Leather Workers Union (Supra)*, the question whether an employee is a member of a union is one of fact and evidence to prove membership is necessary.
41. In the instant case membership receipts or a list of members registered would have proved that the employees were indeed members of the union.
42. Having requested for an opportunity to recruit employees of the Respondent at the Katani site into its ranks, and the request was not rejected, it behooves the Claimant to evidentiary prove how many employees it recruited either on 10th November, 2023 or on any other day.
43. Evidence of the employees having paid a membership fee would have further embellished the Claimant’s case.
44. Similarly, the Respondent denies having received the ministerial Order cited by the Claimant, a copy of which is on record.
45. From the documents on record, there is no indication that the Claimant delivered a copy of Gazette Notice No. 159 dated 29th June, 2021 to the Respondent, the fact that the check-off form makes reference to it notwithstanding.
46. The employer is required to acknowledge receipt of the documents and the Claimant tendered no evidence of receipt.
47. The Claimant’s letter dated 20th November, 2023 addressed to the Respondent makes no reference to any attachment(s) and has no acknowledgment stamp or signature by the Respondent and no evidence of prove of service was adduced.
48. As adverted to elsewhere in this judgment, and for unexplained reasons, the Claimant opted not to file a witness statement or any other document to demonstrate that it recruited the Respondent’s employees as its members.
49. Strangely, the National Secretary General union who signed all the Claimants document on record did not testify to contextualize and affirm the documents filed.
50. In the Court’s view, this is a case where the union by default or design denied itself the distinct opportunity to tell its story and do so convincingly.



51. Regrettably, it is decipherable that neither of the parties herein accorded conciliation a chance as only one joint meeting took place on 16th May, 2024.
52. Relatedly, none of the parties availed minutes of the meeting and the conciliator did not explain why no headway appear to have been made and what his recommendations were or the way forward.
53. The foregoing is justified on the premise that conciliation is a constitutionally mandated dispute resolution mechanism and binds the parties thereto.
54. The conciliation letter dated 5th or 6th June, 2024 leaves more questions than answers.
55. As to whether the Claimant is the proper union to represent the employees of the Respondent, while the Claimant's constitution ought to have been provided on request, it is not the remit of an employer to determine which union should represent its unionisable employees within its ranks.
56. The right of an employee to form, join or participate in the activities and programmes of a trade union including the right to go on strike is constitutional under Article 41(2) of *the Constitution* of Kenya.
57. More significantly, under Article 38 of *the Constitution* of Kenya states that:
 1. Every person has the right to freedom of association which includes the right to form join or participate in the activities of an association of any kind.
 2. A person shall not be compelled to join an association of any kind.
58. Thus, it is the right of workers to decide which trade union to join subject to any inherent restrictions by the union's constitution.
59. In any event the Respondent has not proposed which other union would represent its unionisable employees or do it better.
60. The law does not assign any role to an employer in determining which union its employees should join or represent their interests.
61. Its role is to conclude a recognition agreement once the requisite threshold of membership is attained and deduct and remit trade union dues as appropriate and forward copies of resignation letters to the union.
62. Contrary to the Respondent's assertion that it was the duty of its employees who allegedly joined Claimant union to submit Form S to it, that is not the case on account that form is completed by the Secretary General of the trade union who must date and sign the form and copy to the Registrar of Trade Unions.
63. More significantly Section 48(3) of the *Labour Relations Act* is unambiguous that it is the trade union that serves a notice in Form S upon the employer.
64. Relatedly, the Respondent's argument that Section 19(1)(g) of the *Labour Relations Act* requires employees to request the employer in writing to deduct union dues from their wage or salary has no backing of the law as the said provision does not exist.
65. Similarly, deduction of trade union dues is authorized by the provisions of Section 48 of the *Labour Relations Act* where the union complies with the provisions of the Act as the Claimant union allegedly did.
66. In the end, the Claimants action against the Respondent fails in two respects.



- i. The Claimant tendered no evidence to prove that the respondent's employees registered as its members.
- ii. The applicant failed to prove that it forwarded Gazette Notice No. 159 dated 29th June, 2021 and a notice in Form S to the Respondent which constitute the foundation of deduction and remission of trade union dues.

67. In the premises it is the finding of the Court that the Claimants suit against the respondent is unmerited and it is accordingly dismissed with no Orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 23RD DAY OF JANUARY, 2025.

DR. JACOB GAKERI

JUDGE

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 has 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.

DR. JACOB GAKERI

JUDGE

