



REPUBLIC OF KENYA



KENYA LAW
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Kenya Private Universities Workers Union v Lukenya University (Cause E934 of 2023) [2025] KEELRC 643 (KLR) (28 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 643 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E934 OF 2023
SC RUTTO, J
FEBRUARY 28, 2025

BETWEEN
KENYA PRIVATE UNIVERSITIES WORKERS UNION CLAIMANT
AND
LUKENYA UNIVERSITY RESPONDENT

RULING

1. The Claimant/Applicant filed a Notice of Motion dated 4th November 2024 seeking the following orders:
 - a. Spent
 - b. That the Honourable Court deem fit and be pleased to issue an Order against the Respondent Vice Chancellor-Prof. Rueben M. Muasya and Deputy Vice Chancellor- Dr. Paul Mwanja to appear in Court to show cause why they should not be held in contempt of Court Orders and or directions to the OCS of Mtito Andei Police Station to arrest and produce them in the Honourable Court for sentencing to civil jail.
 - c. That the Honourable Court do and hereby issue an Order against the Respondent to pay union dues from the month of December 2023 to date as tabulated hereunder and until effectation of Union Dues deduction and remittance from her own pocket/resources being 1.5% of the basic salaries and Ksh. 150/= for COTU (K) per month for the 33 members of Kshs.244,470.20.
 - d. That the cost of this suit be provided for by the Respondent.
2. The Application is supported by the Affidavit sworn on 4th November 2024 by Peter Emisembe Owiti who describes himself as the General Secretary of the Claimant/Applicant. Mr. Owiti avers that



this Court issued orders on the 6th day of December 2023 directing the Respondent herein to effect deduction and remittance of union dues and to allow the Claimant access to her members.

3. According to Mr. Owiti, the orders were properly served upon the Respondent through a properly authorized Court process server and acknowledged. That after the service of the court orders, the Respondent totally declined or refused to comply with the same and continued to disobey the said orders with impunity without seeking for stay of execution or to set aside the said orders if aggrieved or dissatisfied.
4. Mr. Owiti deposes that after serving the Respondent with the court orders, the Claimant wrote to the Respondent several times seeking to have a meeting but the Respondent refused to grant permission for the meeting.
5. Mr. Owiti further avers that upon several letters from the Claimant to the Respondent requesting compliance and having no action of good industrial relationship, the Claimant wrote a notice of contempt to the Respondent.
6. Mr. Owiti urged the Court to grant the orders sought to protect the dignity and integrity of the Honourable Court.
7. The Respondent opposed the Application through a Replying Affidavit sworn on 28th November 2024 by Reuben M. Muasya who describes himself as the Vice Chancellor of the Respondent University.
8. Mr. Muasya confirms that the Respondent was served with the orders of this Court dated 6th December 2023.
9. According to Mr. Muasya, the Respondent has to date complied with all the orders of the Court.
10. Mr. Muasya avers that in regards to the first order, no unionisable employee(s) have been victimized by the Respondent on account of their union membership or participation in union activities. He further avers that no complaints of victimization have been raised by the staff members of the Respondent.
11. Mr. Muasya further states that with respect to the second order concerning deductions and remittances of trade union dues from the Respondent's employees who have duly signed check-off forms, the Respondent has complied to the extent that compliance is possible.
12. On this issue, Mr. Muasya states that the Respondent issued deduction notices to its employees who it had been alleged by the Claimant were its members. The said employees wrote letters explicitly directing the Respondent not to deduct any sums from their salary.
13. That the concerned employees categorically denied ever having signed check-off forms and stated that the same had been fraudulently procured without their knowledge and consent.
14. That devoid of proper evidence of membership of its employees to the Claimant, the Respondent became apprehensive that the Claimant's claim of Kshs. 244,470.20 could be as a result of either misrepresentation or internal conflicts with its purported members and therefore was constrained to comply with the instructions of its employees.
15. Mr. Muasya avers that he is counselled by his advocates on record, which counsel he verily believes to be true, that an employer may not make any deduction from an employee who has notified the employer in writing not to make the same and that further any issues arising between a union and its members are a matter between them which the employer has no locus interfering with.



16. He is further counselled that the two parties ought to resolve their matters, including the question of the validity of membership, without dragging the employer in between.
17. Mr. Muasya further avers that the Respondent has also complied with the third and final order that the Respondent allows the Claimant Union access to its employees who are potential members of the Union in its premises.
18. He is further counselled by his advocates on record, which counsel he verily believes to be true, that an employer can only recognize a trade union for purposes of collective bargaining if that trade union represents a simple majority of unionisable employees.
19. It is Mr. Muasya's contention that the Claimant cannot possibly purport to direct the Respondent to gather all its members of Management and Staff, running in the hundreds, to meet the Claimant at a time convenient to the Claimant.
20. In Mr. Muasya's view, the Claimant has shown a clear intention to mislead this Honourable Court by concocting falsehoods in order to obtain orders that are unjustifiable, unwarranted and meant solely to benefit the Claimant.
21. He further contends that the Claimant has come to Court with unclean hands as it has withheld crucial information from this Court on how it obtained the membership of the Respondent's employees.
22. Mr. Muasya further averred that some of the purported members have since left the employment of the Respondent while some are not its employees.

Submissions

23. The Application was canvassed by way of written submissions. Both parties complied and the Court has considered their respective submissions.

Analysis and Determination

24. The Court has carefully considered the Application, the Respondent's Replying Affidavit as well as the rival submissions and it is evident that the singular issue falling for determination by the Court is whether the Respondent is in breach of the orders of this Court issued on 6th December 2023.
25. The crux of the Claimant's Application is that the Respondent has declined to comply with the orders of this Court issued on 6th December 2023 and continues disobeying the said orders with impunity.
26. The Respondent has refuted the Claimant's position and has averred that it has complied with all the orders in question.
27. In view of the above rival arguments, the question that must be answered is whether the Respondent is in breach of the orders issued by the Court on 6th December 2023.
28. The record bears that on 6th December 2023, the Court issued the following orders:
 - a. That a prohibitory order is hereby issued against the Respondent from victimizing any of its unionisable employees on account of their union membership or participation in union activities.
 - b. The Respondent do forthwith commence deductions and remittance of trade union dues from its employees who have duly signed check-off forms.



- c. The Respondent do allow the Claimant union access to its employees who are potential members of the union in its premises subject to the same taking place outside official working hours or if during official working hours, the same should not interfere with the operations of the Respondent.
29. It is an undisputed fact that the Respondent was aware and had knowledge of the terms of the order. Thus, the issue to be determined is whether there was compliance with the said court order.
30. With respect to the first order, the Respondent has averred that no unionisable employee has been victimized and that there have been no complaints of victimization raised by any of its staff members.
31. It is notable that in the instant Application, the Claimant has not indicated let alone suggest that any of its members has faced victimization from the Respondent on account of their Union membership or participation in the activities of the Union. As such, it is safe to presume that there is no contention in that regard.
32. Indeed, the main contention herein appears to be with respect to the second and third order which relate to deduction and remittance of trade union dues by the Respondent as well as access by the Claimant to the Respondent's employees.
33. With respect to the deduction and remittance of trade union dues, the Respondent has averred that it has complied with the court order to the extent that compliance is possible.
34. In this regard, the Respondent avers that upon being served with the court order, it issued deduction notices to employees who had signed check-off forms, and in turn the said employees explicitly directed the Respondent not to deduct any sum of money from their salary. According to the Respondent, the said employees categorically denied signing any check-off forms.
35. Indeed, it is discernible from the record that upon being served with the Court's orders, the Respondent through letters dated 16th February 2024 which were uniformly worded, Prof. Constantine Nyamboga, the then Vice-Chancellor, notified some of its employees whose names were appearing in the check-off forms, that the Respondent would effect trade union deductions from their salaries in the March 2024 payroll. In closing, Prof. Nyamboga advised the said employees to feel free to reach out to him in writing by 29th February 2024 should they have any questions or concerns.
36. In response to the notice from the Respondent's Vice Chancellor, the said employees declined to have trade union dues deductions effected from their salary. In some of the letters, the employees indicated that they signed up for the union membership without full information, while others stated that their salary was not sufficient to sustain the deductions.
37. The Respondent went a step ahead and filed an "Authority to Plead" signed by 21 employees, stating that they have authorized Wanjiku Kiema to act on their behalf in relation to the instant suit. In an Affidavit sworn by Wanjiku Kiema on 28th November 2024, she avers that they are not members of the Claimant Union and that they have never enrolled as members of the Union. She further avers that the employees she represents have never signed any check-off forms authorizing deductions of union dues from their salaries.
38. In the Application dated 16th November 2023, which gave rise to the orders issued on 6th December 2023, the Claimant annexed a copy of the check forms constituting the notice and authority to deduct trade union dues from the Respondent's employees who had acknowledged membership to the Union.



39. From the record, it is evident that approximately 33 employees had signed check-off forms signifying their intention to join the Claimant Union. Be that as it may, the Respondent has only presented letters from 20 employees denouncing membership to the Claimant Union.
40. Therefore, the Respondent has not accounted for the trade union dues deductions of 12 employees whose names appear in the check-off forms filed in Court through the Application dated 16th November 2023. This is with the exception of John Kennedy, whom the Respondent avers in the Notice dated 28th November 2024, is no longer its employee.
41. Indeed, the Respondent has not adduced any form of evidence that it has deducted trade union dues from the said employees and remitted the same to the Claimant's gazetted bank account, in compliance with the orders of 6th December 2023.
42. Section 48(3) of the *Labour Relations Act*, which is relevant herein, provides as follows:
- (48) (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.
43. It is evident from the foregoing statutory provision that the duty of an employer is clear cut upon being served with the check-off form duly signed by an employee acknowledging membership to a Union. In this regard, an employer is required to commence deductions and remittance of trade union dues for the recruited employee within 30 days of being served with the duly signed check-off form.
44. As a matter of fact, an employee's acknowledgment of union membership through the check-off form constitutes sufficient instructions to the employer to commence deductions and remittance of trade union dues.
45. As such, it is not necessary for the employer to commence another exercise of fact-finding to ascertain whether indeed, the employee has joined the Union. Put differently, an employer does not require a separate authority to effect trade union dues deductions from the employees who have signed up for membership to the Union by signing the check-off form.
46. It is therefore not clear to this Court why the Respondent elected to issue notices to some of its employees who had signed the check-off forms that they were proceeding to effect trade union dues deductions and to get in touch with the Vice Chancellor in case of any questions or concerns. It is this Court's view that such an exercise borders on intimidation.
47. In the event any of the Respondent's employees had not signed up for membership, but had trade union dues deductions effected from their salaries, it follows that such an employee would have objected to the said deductions and the Respondent would have been obliged to stop the same. Similarly, where an employee has had a change of heart with respect to their union membership, Section 48(6) of the *Labour Relations Act* provides for resignation of an employee from the trade union and in such a case, an employer is barred from making any further trade union dues deductions and is required to forward a copy of the notice of resignation to the union.
48. In light of the foregoing, it is apparent that the Respondent has not complied with the second order issued on 6th December 2023, in that it has failed to deduct and remit trade union dues of its employees who have signed check-off forms acknowledging membership to the Claimant Union.
49. Granted, the 20 employees whose letters the Respondent annexed to the Affidavit of Mr. Muasya, may have denounced their membership to the Claimant Union.



50. However, there were others who were still members of the Union by dint of the check-off forms served upon the Respondent. Therefore, the Respondent cannot curtail their right under Article 41 (2) (c) of *the Constitution* and Section 4 (1) (b) of the *Labour Relations Act* by failing to deduct and remit their trade union dues to the Union.
51. What's more, the Respondent was duty-bound under Section 48(3) of the *Labour Relations Act* to deduct trade union dues from the salaries of the said employees within 30 days of receiving the check-off forms and remit the same to the Claimant's gazetted bank account.
52. The net effect of the foregoing is that the Respondent is in breach of the second order issued by this Court on 6th December 2023 with respect to deductions and remittance of trade union dues.
53. It has been said times without number that the duty to obey the law by all individuals and institutions is paramount in the maintenance of the rule of law, good order and the due administration of justice.
54. The Court in *Econet Wireless Kenya Limited v Minister for Information & Communication of Kenya & another* [2005] KEHC 3180 (KLR) underscored the importance of compliance with court orders in the maintenance of the rule of law in the following terms;
- “It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against or in respect of whom, an order is made by the court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void.”
55. And in *Hadkinson v Hadkinson*, (1952) ALL ER 567, it was held that:
- “It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged...As long as it exists it must not be disobeyed.”
56. In a nutshell, the Respondent having knowledge of the order to effect trade union dues deductions from its employees who had signed the check-off forms and remitted the said deductions to the Claimant's gazetted bank account, was bound to obey the same unless the order was discharged. Failure to do so amounted to breach of the said order.
57. As to the third order, which is with respect to access of the Claimant Union to the Respondent's employees, the Claimant has averred that it has written several times to the Respondent seeking to have a meeting but the Respondent has declined.
58. Revisiting the terms of the said order, it is evident that the Court directed the Respondent to grant the Claimant access to its employees who are potential members of the Union in its premises subject to the same taking place outside official working hours or if during official working hours, the same should not interfere with the operations of the Respondent.
59. In view of the terms of the said order, it is apparent that the Respondent was not directed to hold a meeting with the Claimant Union or to organize its employees for the purpose of a meeting with the Claimant Union. The order was explicit that it was limited to the Claimant's access to the Respondent's employees who are potential members of the Union for purposes of recruitment.



60. As such, failure by the Respondent to convene a meeting as requested by the Claimant Union does not amount to breach of the order issued by the Court on 6th December 2023 with respect to access.

Orders

61. Having found that the Respondent has not complied with the order of the court issued on 6th December 2023 with respect to deductions and remittance of trade unions dues, the Court makes the following orders:

- a. The Respondent is hereby directed to effect deductions of trade union dues from its employees who have signed check-off forms acknowledging membership to the Claimant Union and to remit the same to the Claimant's gazetted bank account within 30 days from the date of this Ruling.
- b. In default of compliance, a Notice to Show Cause shall issue against the Vice Chancellor of the Respondent University why he should not be cited for contempt of court.
- c. The Claimant will have the costs of this Application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF FEBRUARY 2025.

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STELLA RUTTO

JUDGE

In the presence of:

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

For the Respondent Ms. Masha

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

