



**Kenya Union of Entertainment & Music Industry Employees v Kenya Cultural Centre  
(Cause E168 of 2024) [2025] KEELRC 641 (KLR) (28 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 641 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E168 OF 2024  
SC RUTTO, J  
FEBRUARY 28, 2025**

**BETWEEN**

**KENYA UNION OF ENTERTAINMENT & MUSIC INDUSTRY  
EMPLOYEES ..... CLAIMANT**

**AND**

**KENYA CULTURAL CENTRE ..... RESPONDENT**

**JUDGMENT**

1. The Claimant avers that it has 28 members who are employees of the Respondent and from whom the Respondent has been deducting and remitting trade union dues. It is the Claimant’s case that the Respondent was making trade union dues deductions from the salaries of the said 28 members at 3% of their gross salaries and was remitting the same until 21<sup>st</sup> May 2021 when the Respondent arbitrarily stopped deducting 3% and started deducting Kshs 600/= without offering any explanation.
2. According to the Claimant, the Respondent was only obliged to deduct either Kshs 600/= or 3% of the employees’ gross salaries, whichever was higher.
3. The Claimant further avers that the Respondent continued to arbitrarily deduct Kshs 600/= as trade union dues in spite of its request to deduct 3%. That in April 2022, the Respondent completely stopped the deduction and remittance of trade union dues altogether.
4. That since stopping the deductions, the Claimant has not received any notices from the Respondent to the effect that its members have withdrawn from the Union.
5. The Claimant further avers that the Respondent has since failed and/or refused to remit agency fees deductible from the salaries of the employees who are benefiting from the CBA concluded between the Claimant and the Respondent.



6. It is the Claimant's case that it did obtain an order from the Cabinet Secretary authorizing the deduction of agency fees from the salaries of the employees who are benefiting from the CBA in force.
7. That the Union reported a trade dispute to the Ministry of Labour and Social Protection and a Conciliator was subsequently appointed. The Respondent failed to attend a meeting convened on 6<sup>th</sup> July 2022 by the Conciliator and the dispute has since remained unresolved. According to the Claimant, the Conciliator is not in any way committed to conclude the matter, hence its escalation of the same to court.
8. It is against this background that the Claimant has sought the following reliefs:
  - a. That, the management of the Respondent be compelled to pay trade union dues for its 28 employees at 3% of the employees' gross salaries from the month of April, 2022 to date from their own kitty for the period which they arbitrarily stopped deducting and remitting the same.
  - b. That, the management of the Respondent be compelled to continue deducting trade union dues from the salaries of its 28 employees at 3% of their gross salaries as duly required under the provisions of Section 48 of the Labour Relations Act, 2007 and remit the same to the herein Claimant.
  - c. That, the Respondent be ordered to pay the trade union dues differences for the period of 12 months being the difference between the required 3% of employees' gross salaries and the Ksh.600 which the respondent arbitrarily deducted during the said period.
  - d. That, in the alternative the Respondent be compelled to pay accrued Agency fees from its kitty for its 28 employees who have continued to benefit from the CBA concluded by the claimant and the herein Respondent in the event the said employees resigned from the claimant union.
  - e. That, costs be provided for.
  - f. That, the Honourable Court do grant such better orders and/or relief it deems fit to grant.
9. In response to the Claim, the Respondent filed a Statement of Response together with a Counterclaim dated 26<sup>th</sup> March 2024. Putting the Claimant to strict proof, the Respondent has denied the Claimant's averments that 28 of its employees are members of the Claimant.
10. The Respondent further avers that 19 of its employees withdrew from the Claimant Union on various dates between 28<sup>th</sup> March 2022 and 4<sup>th</sup> April 2022 while 5 persons whose dues the Claimant seeks, separated with the Respondent between 2020 and 2021 through retirement, resignation, expiry of contract and demise.
11. The Respondent further avers without prejudice that the order of the Cabinet Secretary was obtained illegally and without following due procedure and any deductions made were on the basis of misrepresentation on the Claimant's part.
12. It is the Respondent's contention that the Claimant never served upon it any notice of the deduction of 3% of the gross pay of its employees.
13. The Respondent further avers that upon receipt of withdrawal letters from the 19 employees, it stopped deduction of trade union dues to the Claimant.
14. That further, the withdrawal of the 19 members from the Claimant Union reduced its membership to less than a simple majority of the employees of the Respondent.



15. While admitting that it signed a Collective Bargaining Agreement (CBA) with the Claimant Union, the Respondent contends that the same was only effective for the period between 1<sup>st</sup> January 2009 to 31<sup>st</sup> December 2010.
16. That the said CBA expired on 31<sup>st</sup> December 2010 and no new CBA has been negotiated. In this regard, the Respondent avers that none of its employees is benefiting from the CBA hence the Claimant is not entitled to any agency fees.
17. In the Respondent's view, the issues raised in the Statement of Claim have no legal basis and the suit in its entirety lacks merit.
18. In the Counterclaim, the Respondent avers that the CBA it executed with the Claimant did not have a continuation clause and that upon its expiry, the parties did not sign a new CBA.
19. That despite expiry of the CBA, the Claimant sought to be paid agency fees and between December 2020 to April 2022, the Claimant received a total of Kshs 126,990/= for 9 employees who were not members of the Claimant.
20. According to the Respondent, it deducted the agency fees from the said employees under protest.
21. On account of the foregoing, the Respondent has asked the Court to dismiss the Claimant's Claim in its entirety and to order that the CBA signed between the Respondent and the Claimant lapsed on 31<sup>st</sup> December 2010. The Respondent has further prayed for an order directing the Claimant to pay back the sum of Kshs 126,990/= being agency fees by 9 unionisable employees. In addition, the Respondent has asked to be awarded the costs of the suit plus interest.
22. During the hearing which proceeded on 26<sup>th</sup> November 2024, both parties called oral evidence.

#### **Claimant's Case**

23. The Claimant called oral evidence through Job Mucuha who testified as CW1. Mr. Mucuha, who identified himself as the Claimant's Secretary General, adopted his witness statement and the documents filed on behalf of the Claimant to constitute his evidence in chief.
24. In his testimony in chief, Mr. Mucuha reiterated the averments contained in his Statement of Claim and witness statement.
25. During cross-examination, Mr. Mucuha admitted that union membership can rise and fall and that it is possible that the Claimant's membership may have dropped from 28.
26. Mr. Mucuha further confirmed during cross-examination that the Claimant Union received the withdrawal letters from the Respondent's employees who were its members.
27. According to Mr. Mucuha, the CBA was still in force. It was his further testimony that the Union served a notice upon the Respondent to extend the CBA.
28. In re-examination, Mr. Mucuha maintained that the only issue herein is the deduction and remittance of trade union dues and agency fees. That even where employees have resigned from the Union, they continue to draw benefits from the CBA, hence the basis for the Union to claim agency fees.

#### **Respondent's Case**

29. The Respondent called oral evidence through Michael Pundo, who testified as RW1. He identified himself as the Respondent's Chief Executive Officer and equally, he adopted his witness statement to



constitute his evidence in chief. He further produced the documents filed on behalf of the Respondent as exhibits before Court.

30. During cross-examination, RW1 testified that the Respondent was not obliged to write to the Union with respect to their withdrawal of membership.

### **Submissions**

31. Upon close of the hearing, both parties filed written submissions. The Court has given due consideration to the said submissions.
32. The Claimant has submitted that the management of the Respondent has no authority to arbitrarily stop deducting Trade Union dues from the salaries of its employees who are its members and/or amend the rate of deducting Trade Union dues.
33. It was the Claimant's further submission that since the arbitrary stoppage of deduction and remission of trade union dues by the Respondent, it has not received any notices from the Respondent to the effect that its members have withdrawn from the Union. According to the Claimant, they only came to know of the existence of the purported resignation letters through this suit.
34. To this end, the Claimant maintained that the Respondent had no authority to stop effecting trade union dues whatsoever until such time the copies of the purported resignations were duly served upon it.
35. Arguing along the same lines, the Claimant posited that even if the Respondent's employees had truly resigned and/or withdrawn their membership from the Union, the Respondent was still required to deduct Agency fees from the said employees since the CBA is still in force and is duly binding.
36. It is the Claimant's position that the Respondent's actions are a blatant scheme to interfere with the rights of association of its unionisable staff employees in contravention of Articles 36 and 41 of *the Constitution* of Kenya, 2010, Articles 2 and 3 of The ILO Convention No. 87 and Sections 4 (1) and (2) of the *Labour Relations Act*, and hence, denying its employees the opportunity to maintain their union membership and freely participate in the activities of the union of their choice with impunity.
37. On the Respondent's part, it was submitted that by dint of Section 109 of the *Evidence Act*, the burden of proof to demonstrate that the listed 28 persons were indeed members of the Union, falls on the Claimant. According to the Respondent, the Claimant did not adduce check-off forms or any evidence to prove that all 28 listed persons were its members.
38. Placing reliance on the case of *Banking Insurance & Finance Union v Rafiki Microfinance Bank* [2023] KEELRC 970(KLR), the Respondent submitted that contrary to the Claimant's allegations, the forwarding of notices of resignation does not curtail an employee's right to freedom to leave a trade union.
39. The Respondent further submitted that going by the evidence presented through the documentary exhibits and statement, it was able to show that the Claimant had only 19 members, that letters of withdrawal from the Claimant were received by both the Respondent and the Claimant, and that on receipt of the withdrawal letters, the Respondent stopped deduction in compliance with Section 48(6) of the *Labour Relations Act*. Consequently, the Respondent submitted that the Claimant has no members who are its employees.
40. Referencing the case of *Mukiria Farmers Co-operative Society Ltd v Jacob Rukaria & 5 others* (2017) eKLR, the Respondent further submitted that the CBA has no provision allowing it to apply after 31<sup>st</sup>



December 2010. That nothing in Clause 21 of the CBA shows an intention between the parties that the CBA would continue to apply after its expiry until a new CBA is negotiated.

41. Citng the case of Bakery, Confectionery, Food Manufacturing and Allied Workers Union [K] v Mombasa Maize Millers Limited & others [2016] KEELRC 1532 (KLR), the Respondent posited that where the CBA terms are obsolete by reasons of non-review for a long time, without good reason, then the CBA is an empty shell having no benefit to the members.
42. In the same breath, the Respondent posited that a CBA whose terms are obsolete, if upheld to be applicable, would amount to a violation of fair labour practices. To buttress this position, the Respondent sought to rely on the case of Kenya Chemicals & Allied Workers Union v KEL Chemicals Ltd (2017) eKLR.
43. In closing, the Respondent submitted that the CBA it executed with the Claimant lapsed on 31<sup>st</sup> December 2010, has not continued to apply and cannot apply infinitum and employees of the Respondent are not benefitting in any way from the CBA having independently negotiated better terms of employment.

### **Analysis and Determination**

44. I have considered the pleadings, the evidence tendered by both sides as well as the rival submissions and find the issues falling for determination as being: -
  - a. Whether the Claimant has proved that it has members who are employees of the Respondent and hence entitled to trade unions dues deductions from the said employees;
  - b. Whether the CBA registered under RCA No. 92 of 2009 is still in force;
  - c. Depending on (b) whether the Claimant is entitled to agency fees;
  - d. Whether the Claimant is entitled to the reliefs sought.
  - e. Is the Counterclaim merited?

Whether the Claimant has proved that it has members who are employees of the Respondent and hence entitled to trade unions dues deduction from the said employees

45. It is the Claimant's case that it has 28 members from the Respondent's workforce from whom the Respondent has been deducting and remitting trade union dues until April 2022.
46. This position has been refuted by the Respondent who avers that 19 of the employees who were members of the Claimant Union withdrew their membership while 5 employees separated with the Respondent between 2020 and 2021 through retirement, resignation, expiry of contracts and demise.
47. In support of its position, the Respondent exhibited copies of letters from employees who were members of the Claimant Union in which they indicated withdrawal of their union membership. Further exhibited were copies of letters addressed to the Claimant's Secretary General (CW1) indicating their resignation from the Claimant Union.
48. In addition, the Respondent exhibited a copy of a letter dated 6<sup>th</sup> April 2022 addressed to CW1 from one Samuel Amuko Okunjo who signed off as the Union Representative. In the said letter, Mr. Okunjo indicated that Respondent's members of staff were withdrawing their membership due to unresolved issues which included; failure to negotiate for a CBA despite requests from members, failure to respond to communication from members, no commitment in following up former employees' dues and failure to represent members when faced with employment disputes.



49. Notably, the Claimant did not deny receiving the letters of resignation from the Union by the Respondent's employees. Indeed, during cross-examination, CW1 admitted that the Claimant received the letters of the employees, withdrawing membership from the Union.
50. If anything, the Claimant exhibited a copy of a letter dated 7<sup>th</sup> February 2018 from 8 of the Respondent's employees indicating their resignation from the Union.
51. The foregoing discounts the Claimant's submissions that it has not received any notices from the Respondent's employees notifying it (Union) of their withdrawal from the Union and that it only came to know of the purported resignation through the instant suit.
52. It is also noteworthy that the Claimant did not expressly indicate the members from whom it was claiming trade union dues. Its claim in this regard was global in nature and only referenced 28 members with no names or personnel numbers identifying them.
53. Pursuant to the provisions of Section 48(6) of the *Labour Relations Act*, an employee is allowed to withdraw his/her membership from a trade union if they so wish by serving their withdrawal notices to the employer. The aforementioned statutory provision provides as follows;
- (486) 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.
54. Accordingly, upon withdrawal from the Union, an employer cannot make any deduction from an employee in the form of trade union dues. Therefore, the Claimant's argument that the Respondent had no authority to stop the trade union dues deductions on the basis that it had not forwarded to it (Claimant) the notices of the withdrawal from the union does not hold.
55. In any event, the Claimant was made aware of the withdrawal from the union by the members themselves, hence that constituted sufficient notice.
56. In this case, the Respondent having received withdrawal letters from its employees was barred by dint of Section 48(6) of the *Labour Relations Act* from making further deductions and remittance of trade union dues from the salaries of the employees who were formerly members of the Claimant union.

#### **Whether the CBA registered under RCA No. 92 of 2009 remains in force**

57. From the Claimant's standpoint, the CBA registered under RCA No. 92 of 2009 which was executed by both parties on 18<sup>th</sup> March 2009, is still in force until such a time that a new CBA is concluded. On this issue, the Respondent has taken a diametrically opposite position and maintains that the CBA has no provision allowing it to apply after 31<sup>st</sup> December 2010.
58. Clause 21 of the CBA which is the operative part provides as follows:
- “The effective date shall be 1<sup>st</sup> January 2009 and the agreement shall run for a total period of twenty four (24) months. Either party willing to amend or modify any terms of this CBA, shall be required to serve the other party with one month written notice, indicating the extent of the intended amendments or modifications. In the event no such notice is served, this CBA shall remain in force.”
59. It is explicit from the wording of Clause 21 reproduced above that the life of the CBA was two years starting 1<sup>st</sup> January 2009 and expiring on 31<sup>st</sup> December 2010.



60. The Court of Appeal in the case of Pius Kimaiyo Langat v Co-operative Bank of Kenya Limited [2017] KECA 152 (KLR) addressed the binding nature of contracts as follows:

“ [38]. We are alive to the hallowed legal maxim that it is not the business of courts to rewrite contracts between parties. They are bound by the terms of their contracts, unless coercion, fraud or undue influence are pleaded and proved.” See National Bank of Kenya Ltd vs Pipeplastic Samkolit (K) Ltd [2002]2 EA 503. The primary task of the court is to construe the contract and any terms implied in it. See Megarry, J. in the case of Coco vs A. N. Clark (Engineers) Ltd. - [1969] RPC 41.”

61. My construction of Clause 21 of the instant CBA is that it was to remain binding on both parties from 1<sup>st</sup> January 2009 up to 31<sup>st</sup> December 2010.

62. Indeed, in the event the parties intended the CBA to remain in force beyond 31<sup>st</sup> December 2010, nothing would have been easier than for the parties to state as much in express terms.

63. Further, pursuant to Section 59 (1) of the *Labour Relations Act*, it is clear that a collective agreement binds for the period of the agreement. This position was reaffirmed by the Court of Appeal in the case of Mukiria Farmers Co-operative Society Ltd v Jacob Rukaria & 5 others [2017] KECA 432 (KLR).

64. Suffice it to say, the CBA was strictly for twenty four months and no more. As such, the CBA lapsed on 31<sup>st</sup> December 2010 and thereafter, ceased to be in force.

65. In light of the foregoing findings, it follows that the Claimant is not entitled to agency fees from the unionisable employees who ceased to be Union members.

66. This is for the primary reason that agency fee is paid to a trade union for the benefits derived from a CBA. In this case, as the CBA ceased to be in force after 31<sup>st</sup> December 2010, a claim for agency fees does not lie. This is bearing in mind that the Claimant did not dispute the Respondent’s assertions that the terms of the CBA have become obsolete and inferior to prevailing terms of engagement that it is currently implementing.

67. In this regard, the Respondent made specific reference to the basic salaries negotiated under the CBA and which according to the Respondent are now below the prescribed minimum wage in the country.

68. Accordingly, the Claimant will only be entitled to agency fees upon negotiation of a new CBA.

69. For the foregoing reasons, the reliefs sought by the Claimant cannot be sustained.

### **Merit in the Counterclaim?**

70. As stated herein, the Respondent has filed a Counterclaim alongside the Response. Through the Counterclaim, the Respondent seeks to recover the sum of Kshs 126,990.00 which it states was erroneously deducted from 9 of its employees during the period December 2020 to April 2022.

71. The Claimant exhibited a copy of gazette notice no 14364 of 12<sup>th</sup> October 2012 in which an order was made by the Cabinet Secretary for the deduction of agency fees from unionisable employees of the Respondent who were not members of the Claimant but were covered by the CBA registered under RCA No. 92 of 2009.

72. It is therefore apparent that the agency fees deductions were effected on the basis of the said gazette notice. This being the case, the agency fees deducted are not recoverable.

73. Consequently, the Counterclaim is declined.



**Order**

74. For the foregoing reasons, the Court finds and holds that the Claim is without merit and is consequently dismissed with an order that each party shall bear their own costs. The Counterclaim is similarly dismissed with no orders as to costs.

**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 Mr. Mucuha (Union Rep)

For the Respondent No appearance

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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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**

