



Kenya Universities Staff Union v Moi University & 2 others (Petition E011 of 2023) [2025] KEELRC 315 (KLR) (7 February 2025) (Judgment)

Neutral citation: [2025] KEELRC 315 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
PETITION E011 OF 2023
MA ONYANGO, J
FEBRUARY 7, 2025**

BETWEEN

KENYA UNIVERSITIES STAFF UNION PETITIONER

AND

MOI UNIVERSITY 1ST RESPONDENT

VICE CHANCELLOR, MOI UNIVERSITY 2ND RESPONDENT

**DEPUTY VICE CHANCELLOR (ADMINISTRATION, PLANNING &
STRATEGY) MOI UNIVERSITY 3RD RESPONDENT**

JUDGMENT

1. The Petitioner is a Labour Union duly registered in the Republic of Kenya, bound to protect *the constitution* of Kenya and the rule of law on behalf of its members in all Public Universities of Kenya with the purpose of improving working conditions and welfare of the said members.
2. The 1st Respondent is a Public University in Kenya established under the provisions of the University Act.
3. The 2nd Respondent is the administrative and academic head of the 1st Respondent.
4. The 3rd Respondent is the Deputy Vice Chancellor in charge of Administration, Planning and Strategy of the 1st Respondent.
5. Vide its petition dated 30th October, 2023 as amended on 22nd November, 2023, the Petitioner seeks the following remedies against the Respondents:
 - a. A declaration be and is hereby made that the Respondents have violated the provisions of Articles 2, 3(1), 41 and 232 of *the Constitution* of Kenya 2010.



- b. A declaration be and is hereby made that the proposed reduction of Union dues deductions by the Respondents from 2% of basic wage to 1% of basic wage of the Unionised Petitioner's members working for the 1st Respondent is null and void.
- c. A declaration be and hereby issued that the Respondents are bound by the provisions of the CBA 2017/2021 and the legal notice No. 10 of 2019 dated 31st January 2019 in regard to deduction of Union dues.
- d. An order of certiorari be and is hereby issued quashing the internal memo referenced MU/ADM/1/126 and dated 11th October 2023 and all its consequential orders.
- e. An order of mandamus be and is hereby issued against the Respondents compelling them to forthwith continue with Union deductions at the rate of 2% of basic wage of all the Petitioner's Unionised members.
- f. That a Permanent Injunction be issued stopping the Respondents, their officers, staff, agents, servants, and/or any other persons acting at their behest howsoever from continuing with the planned adjustment of Union dues deductions from the Petitioners members from 2% to 1% of basic wage as per the internal memo referenced MU/ADM/1/126 and dated 11th October 2023.
- g. An order be issued to the 1st Respondent to forward to the Petitioner's account the undeducted and unremitted 1% Union dues for the month of October 2023 which amounts should be recovered from the 1st Respondent own funds and not Unionised members' salaries.
- h. That the Costs of the Petition be borne by the Respondents.
- i. This Honourable Court issues any other order it may deem fit to grant.

The Petitioner's Case

6. The Petitioner herein avers that on or about 11th October 2023, the 3rd Respondent herein on behalf of the 1st Respondent gave a notice via an internal memo of the 1st Respondent's intention to reduce/adjust the Union deductions from the Unionised Petitioner's members who work for the 1st Respondent from the gazetted 2% to 1% of each member's basic wage.
7. The said notice is purportedly based on an advisory from the 1st Respondent's Senior Legal Officer on a court order that declared the Petitioner's 2020 Constitution null and void in addition to a conservatory order that was issued to suspend any amendments to the Petitioner's Constitution.
8. It was the position of the Petitioner that the Judgment in Eldoret ELRCPET/E026/2021 Francis Chengoli & 2 Others v Kenya Universities Staff Union did not declare the 2017/2021 CBA and [Legal Notice No. 10 of 2019](#) dated 31st January 2019 null and void neither were the operations of the same set aside.
9. It was further the position of the Petitioner that the Conservatory Orders issued in Nairobi ELRCPET/E083/2023 Joseck Olukusi Alwala & 3 Others v Kenya Universities Staff Union as per the orders dated 18th August 2023 did not declare the 2017/2021 CBA and [Legal Notice No. 10 of 2019](#) dated 31st January 2019 null and void and neither were their operations set aside.
10. The Petitioner avers that the directive to the Accountant, Salaries Section was to take effect during the payment of October 2023 salaries and was made without consultation with the Petitioner and/or its officials.



11. The Petitioner avers that the 2% deduction of basic wage has been in accordance to the prevailing gazette notice on Union deductions i.e [Legal Notice No. 10 of 2019](#) dated 31st January 2019.
12. That the same has also been in accordance to clause 16 of the CBA in operation i.e 2017/2021 CBA which states that:
 16. A subscription fee of two percent (2%) of basic salary shall be deducted as Union dues and remitted to KIJU gazetted account in accordance with the [Labour Relations Act](#), 2007.
13. The Petitioner's position is that the terms of the CBA can only be altered at a Joint Negotiating Committee (JNC) forum between the Petitioner and Inter Public Universities Councils Consultative Forum (IPUCCF) of Federation of Kenya Employers (FKE) and not by the Respondents unilaterally.
14. The Petitioner avers that the Respondents intended actions are illegal and unlawful and shall be in contravention to the 2017/2021 CBA and [Legal Notice No. 10 of 2019](#) dated 31st January 2019 which is yet to be revoked.
15. The Petitioner avers that before the interim orders issued by the court on 8th November 2023 which allowed the Petitioner's application dated 30th October 2023 that stopped the Respondents from making any further union deductions at 1%, the 1st Respondent had partially complied with the internal memo referenced MLJ/ADM/1/126 and dated 11th October 2023 by remitting 1% Union dues for deductions made for October 2023 salaries instead of 2%.
16. That the un-deducted and unremitted Union dues for the October 2023 salaries should be recovered from the 1st Respondents funds as they acted contrary to the prevailing CBA and ministerial order.
17. The Petitioner stated that the intended implementation of the 1% deduction of Union dues from 2% was in violation of article 2, 41 and 232 of [the Constitution](#) as read with Sections 48 & 50 of the [Labour Relations Act](#) in that the Respondents cannot unilaterally decide to negatively adjust union deductions to be made in respect of the Petitioners Unionised members without any lawful cause.
18. The Petitioner averred that the said action would not only be in contravention of the labour laws but was also detrimental to the Petitioner that has to continue serving the best interest of its members hence relies on the said funds to keep its operations running.
19. The petition is anchored on articles 2, 3, 41(1), 41(5), 232 of [the Constitution](#).
20. It was the Petitioners position that the CBA is a binding instrument between the Petitioner the 1st Respondent hence its terms cannot be unilaterally altered by the Respondents to the detriment of the Petitioner and its members as the same breaches the spirit of article 41(1) of [the Constitution](#).
21. The Petitioner asserted that it was not the Respondents duty to determine the rate of Union dues deductions from the Petitioner's Unionised members as this was in violation of article 41 of [the Constitution](#) of Kenya 2010 on the Union's right to determine its own administration, programmes and activities.
22. The Petitioner further asserted that the Respondents violated Article 41 (5) of [the Constitution](#) of Kenya 2010 on the right to collective bargaining by breaching the terms of the prevailing 2017/2021 CBA and [Legal Notice No. 10 of 2019](#) dated 31st January 2019 in that the Respondents unilaterally and without consultation and against the spirit of collective bargaining decided to implement the reduction of Union dues deductions from 2% of basic wage of Petitioner's Unionised members to 1%.



23. The Petitioner further asserted that the decision to reduce the Union dues deductions from the Petitioner's members from 2% of basic wage to 1% of basic wage violated article 232(e) of the Constitution of Kenya 2010 on values and principles of public service in that there was no proper accountability on the administrative action unilaterally taken that was unlawful and un-procedural, which decision is going to adversely affect the Petitioner's operations financially and the manner in which it serves its members.
24. The Petitioner states that Section 48(3) of the Labour Relations Act provides for deduction of trade union dues and states that:
- (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.
25. That Section 50(8)(i) of the Labour Relations Act under general provisions applicable to deductions states that:
- (8) No employer shall—
- (i) fail to comply with an order or a notice issued under this Part:
26. That despite the Ministerial Order in Legal Notice No. 10 of 2019 dated 31st January 2019 having not been revoked under Section 50(2) of the Labour Relations Act, the Respondents have instituted a process of violation of the provisions of the said notice/order contrary to Section 50(8)(i) of the Labour Relations Act.

The Respondents' case

27. The Respondents filed a replying affidavit of Petrolina C. Chepkwony, the Senior Legal Officer of the 1st Respondent, sworn on 7th November, 2023 in which she deposes that the Petitioner and the Respondent have, through the Inter Public Universities Councils Consultative Forum (IPUCCF) entered into a Recognition Agreement and have consequent thereto negotiated several Collective Bargaining Agreements (CBAs). That at the time of filing the instant suit the parties were in the process of negotiating the CBA to cover the period 2017-2021.
28. That the subject matter of the dispute herein is the implementation of the Kenya Universities Staff Union Constitution. That where there is conflict between the Kenya Universities Staff Union Constitution, the CBA and the law, the most favourable terms for the employee should take precedence.
29. It is the averment of Ms. Chepkwony that in petition Eldoret ELRC PET/026/2021 Francis Cheng'oli & 2 Others v Kenya Universities Staff Union members of the Petitioner sought orders inter alia that a declaration be issued to the effect that Kenya Universities Staff Union Constitution registered on 3rd April, 2013 be reinstated as the constitution in force. That in its judgment delivered on 18th March, 2022 the court declared the Kenya Universities Staff Union Constitution registered on 3rd April, 2013 by the Registrar of Trade Unions reinstated. That Article 5 b) of the Kenya Universities Staff Union Constitution of 2013 states that:

“Every eligible member shall be required to pay a registration fee of Ksh. 100.00 (Kenya shillings one hundred) on application to membership and thereafter upon being accepted, a



monthly subscription of 1 (one) per cent of one 's monthly basic salary or any other amount as may be determined by a National Delegates Conference from time to time.”

30. The Respondents stated that in making the decision to apply the 1% deduction of union dues, the 1st Respondent was not only implementing the court order directing it to do so, but was also guided by Section 26 of the *Employment Act*, Cap 226, Laws of Kenya, which provides that: -

“Where the terms and conditions of a contract of service are regulated by any regulations, as agreed in any collective agreement or contract between the parties or enacted by any other written law, decreed by any judgment award or order of the Industrial Court are more favourable to an employee...then such favourable terms and conditions of service shall apply.”

31. The 1st Respondent averred that it did not unilaterally decide to adjust union deductions to be made in respect to the Petitioners unionized members without lawful cause. Such allegations are absurd and without merit since the Petitioner was fully aware of the impending adjustment of union dues because they were the Respondents in the case in which the orders were issued necessitating the adjustment.
32. The Respondents aver that despite alluding to the 2017/2021 CBA and the *Legal Notice No. 10 of 2019*, the Petitioner has not demonstrated that the revision of the deduction of union dues from 1% to 2% was determined by a National Delegates Conference as envisioned in Article 7 of the Kenya Universities Staff Union Constitution of 2013.
33. The Respondents' aver that it is within their knowledge that the Petitioner's members have been collecting signatures advocating for the implementation of the court order directing the Respondents to deduct 1% of the union dues.

Analysis and determination

34. The petition was disposed of by way of written submissions. Only the petitioner filed submissions.
35. From the pleadings and submissions on record, the only issue for determination is whether the Respondent violated the Petitioners constitutional rights by unilaterally reducing the union subscription rate from 2% to 1%.
36. Article 41 of *the Constitution* provides for the rights of trade unions as follows:
41. Labour relations
- (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.

37. The rights of a trade union are further entrenched in the [Labour Relations Act](#) as follows:

- 8. Every trade union, employers' organization or federation has the right to—
 - (a) subject to the provisions of this Act
 - (i) determine its own constitution and rules; and
 - (ii) hold elections to elect its officers;
 - (b) plan and organize its administration and lawful activities;
 - (c) participate in forming a federation of trade unions or a federation of employers organisations;
 - (d) join a federation of trade unions or a federation of employers organisations, subject to its constitution, and to participate in its lawful activities; and
 - (e) affiliate with, and to participate in the affairs of any international workers organisation or international employers organisation or the international labour organisation, and to contribute or receive financial assistance from those organisations.
 - 9. A provision in any contract of employment or collective agreement, whether concluded before or after the commencement of this Act, that contradicts or limits any provision of this section is invalid, unless the contractual provision is expressly permitted by this Act.
 - 10. If there is a dispute about the interpretation or application of any provision of this Part, any party to the dispute may refer the dispute in writing—
 - (a) to the Minister to appoint a conciliator as specified in Part VIII; or
 - (b) if the dispute is not resolved at conciliation, to the Industrial Court for adjudication.
 - 11. In any proceedings under this Act
 - (a) a party that alleges that a right or protection conferred by this part has been infringed shall prove the facts of the conduct; and
 - (b) the party who is alleged to have engaged in that conduct shall prove that their conduct did not infringe any provision of this Part.
38. From the provisions of both [the Constitution](#) and the [Labour Relations Act](#) it is clear that trade union activities are protected from interference by employers or any other bodies. The independence of trade unions is further protected in section 14(1) of the [Labour Relations Act](#) which provides as follows-

14.



- (1) A trade union may apply for registration if -
 - (a) ...;
 - (b) the trade union has adopted a constitution that complies with the requirements of this Act, including the requirements set out in the First Schedule;
 - (c) ...;
 - (d) ...;
 - (e) ...;
 - (f) ...;
 - (g) ...;
 - (h) the trade union is independent from the control, either direct or indirect, of any employer or employers' organisations; and
 - (i) the trade union's sole purpose is to pursue the activities of a trade union.

39. The Recognition Agreement between IPUCCF and the Petitioner does not provide for the rate of union dues. The only provision in the Recognition Agreement that relates to union dues is clause 6.13 which provides that-

“The Employer will deduct union dues or agency fee where applicable through check off system”.

40. The deduction and remittance of union dues is provided for in sections 48 and 49 of the [Labour Relations Act](#) as follows -

Partvi Trade Union Dues, Agency Fees And Employers' Organisation Fees

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.
- (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.
49. Deduction of agency fees from unionisable employees covered by collective agreements.
- (1) A trade union that has concluded a collective agreement registered by the Industrial Court with an employer, group of employers or an employers' organisation, setting terms and conditions of service for all unionisable employees covered by the agreement may request the Minister to issue an order requiring any employer bound by the collective agreement to deduct an agency fee from the wages of each unionisable employee covered by the collective agreement who is not a member of the trade union.
 - (2) A request in accordance with subsection (1) shall
 - (a) be signed by the authorized representatives of the trade union and employer, group of employers or employers' organisation;
 - (b) supply a list of all employees prepared by the employer in respect of whom a deduction shall be made;
 - (c) specify the amount of the agency fee, which may not exceed the applicable trade union dues; and
 - (d) specify the trade union account into which the dues shall be paid.
 - (3) An employer in respect of whom the Minister has issued an order as specified in subsection (1) shall commence deducting agency fees from the employees named in the Minister's notice within thirty days of receiving the Minister's notice.
 - (4) issued under this section on application by the trade union and the employer, group of employers or employers' organisation concerned.
 - (5) A member of trade union covered by a collective agreement contemplated by subsection (1) who resigns from the union, is immediately liable to have an agency fee deducted from his wages in accordance with this section.
 - (6) If a collective agreement is implemented retrospectively after registration by the Industrial Court, the agency fee shall be deducted and paid to the trade union for the period of retrospective implementation in accordance with this section.



41. The rate of union dues for the Petitioner’s members is provided for in the CBA between the parties herein for the period 1st July, 2017 to 30th June, 2021 at clause 16 thereof as follows:
- “ 16. A subscription fee of two percent (2%) of basic salary shall be deducted as Union dues and remitted to KUSU gazette account in accordance with the *Labour Relations Act, 2007.*”
42. *The Constitution* of the Petitioner registered on 3rd April, 2013 provides for union dues at Article 5(b) thereof as follows:
- “ Every eligible member shall be required to pay a registration fee of Kshs. 100.00 (Kenya shillings one hundred) on application for membership and thereafter upon being accepted, a monthly subscription of 1 (one) per cent of one’s monthly basic salary or any other amount as may be determined by a National Delegates Conference from time to time.”
43. From the totality of the foregoing it is clear that union dues are determined by the Petitioner’s National Delegates Conference from time to time. The Petitioner then seeks publication of the same by the Minister who then publishes in the gazette both the amount and the account into which the subscription is to be paid. The same provisions apply for both union dues and agency fees as provided in sections 48 and 49 of the Act. Such union dues once published in the gazette by the Minister, can only be reviewed by the same minister through another gazette notice.
44. The averment of the Respondent that it was complying with the law and the decision of the court in Eldoret ELRC PET/026/2021 Francis Cheng’oli & 2 Others v Kenya Universities is not only misguided but also in violation of the provisions of *the constitution* and the *Labour Relations Act*. The same amounts to interference into the affairs of the Petitioner against the provisions of the law.
45. The averment by the Respondent that it was advised by its Senior Legal Officer to revise the subscriptions of the Petitioner is also misguided as the Respondents have no role in reviewing subscriptions except in accordance with sections 48 and 49 of the *Labour Relations Act*. The Respondents’ Senior Legal Officer was obviously misleading the Respondents in her advisory which was not based on the provisions of the law and which she had no authority to do.
46. From the foregoing, I find that the petition is merited and make the following orders:
- a. A declaration be and is hereby made that the Respondents have violated the provisions of Articles 2, 3(1), 41 and 232 of *the Constitution* of Kenya 2010.
 - b. A declaration be and is hereby made that the proposed reduction of Union dues deductions by the Respondents from 2% of basic wage to 1% of basic wage of the Unionised Petitioner’s members working for the 1st Respondent is null and void.
 - c. A declaration be and hereby issued that the Respondents are bound by the provisions of the CBA 2017/2021 and the *Legal Notice No. 10 of 2019* dated 31st January 2019 in regard to deduction of Union dues.
 - d. An order of certiorari be and is hereby issued quashing the internal memo referenced MU/ADM/1/126 and dated 11th October 2023 and all its consequential orders.
 - e. An order of mandamus be and is hereby issued against the Respondents compelling them to forthwith continue with Union deductions at the rate of 2% of basic wage of all the Petitioner’s Unionised members.



- f. That a Permanent Injunction be issued stopping the Respondents, their officers, staff, agents, servants, and/or any other persons acting at their behest howsoever from continuing with the planned adjustment of Union dues deductions from the Petitioners members from 2% to 1% of basic wage as per the internal memo referenced MU/ADM/1/126 and dated 11th October 2023.
- g. An order be and is hereby issued to the 1st Respondent to forward to the Petitioner's account the un-deducted and unremitted 1% Union dues for the month of October 2023 which amounts should be recovered from the 1st Respondent's own funds and not Unionised members' salaries.
- h. That the Costs of the Petition shall be borne by the Respondents.

47. The Respondents shall bear the Petitioner's costs of the suit.

DATED, DELIVERED AND SIGNED AT ELDORET THIS 7TH DAY OF FEBRUARY, 2025.

M. ONYANGO

JUDGE

