



Kenya Private Universities Workers' Union v Mount Kenya University (Cause 117 of 2020) [2025] KEELRC 284 (KLR) (6 February 2025) (Judgment)

Neutral citation: [2025] KEELRC 284 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 117 OF 2020
CN BAARI, J
FEBRUARY 6, 2025**

BETWEEN
KENYA PRIVATE UNIVERSITIES WORKERS' UNION CLAIMANT
AND
MOUNT KENYA UNIVERSITY RESPONDENT

JUDGMENT

1. Before Court is the Claimant's Memorandum of Claim dated 26th February, 2020, wherein, its seeks that the Respondent be ordered to allow the union to access her members and potential members; an order compelling the Respondent to comply with the mandatory provisions of Section 48 of the *Labour Relations Act*, 2007, by way of deducting and remittance of union dues; that the Respondent be restrained from victimizing, coercing and/or terminating the services of the Claimant's members, and that the Respondent be bound to sign a recognition agreement with the Claimant union.
2. The Respondent entered appearance on 3rd March, 2020, and subsequently filed a Response to the Claimant's claim on 15th August, 2024.
3. A preliminary objection together with a litany of motions filed by the parties, were dealt with vide rulings rendered on various dates, paving way for the main claim.
4. Parties canvassed the claim by way of written submissions.
5. All parties filed submissions.

The Claimant's Case

6. The Claimant's case is that it has written various letters and notices to the Respondent, but to date the Respondent has declined to have a meeting with them on the issues of union dues.



7. It is the Claimant's further case that when the Respondent university management's refused to allow its officials access to its members, it sought the intervention of COTU-K which sought that the Claimant is allowed access, but which the Respondent still declined.
8. The Claimant states that again on 20th September, 2016, it wrote to the Respondent requesting to conduct union education/recruitment meeting on 4th October, 2016, but that the Respondent did not respond to its request.
9. The Claimant further states that it attempted to carry out member education on the date earlier communicated to the Respondent, only to find that the Respondent had coerced its workers not to join the union which prompted it to report a trade dispute under Section 62 of the *Labour Relations Act*, 2007.
10. The Claimant states that a conciliator was appointed pursuant to the report of the dispute, but that the Respondent declined to participate in the conciliation process and which resulted in the conciliator issuing a certificate in accordance with Section 69(a) of the RLA.
11. It is the Claimant's case that later in May, 2019, it managed to recruit 9 members from the service of the Respondent who signed their check-off forms and which were forwarded to the Respondent.
12. The Claimant states that it again forwarded the check-off Forms to the Respondent on 18th February, 2020, together with a request for a meeting, which request the Respondent again declined.
13. The Claimant states that when the Respondent received its union FORM S/check-off forms, it through an agent, coerced and threatened its members to withdraw from the Claimant's union or they be terminated from service.
14. The Claimant prays that the court finds the Respondent's foregone actions null and void, and grant it the reliefs listed in its statement of claim.

The Respondent's Case

15. The Respondent's case is that on 7th February, 2020, it received a letter dated 6th February, 2020 from the Claimant, proposing, allegedly at the request of their members, who are employees of the Respondent, to hold a Union introduction Meeting and education Day Meeting on 14th February, 2020 at the main campus starting from 12:00pm to 2:00pm.
16. The Respondent states that it had not been made aware prior to the said letter, that Claimant Union had members within their staff and they had additionally not signed any Recognition Agreement with it pursuant to Section 56 of the *Labour Relations Act*.
17. It is the Respondent's case that due to the short notice requiring them to avail all their employees for the proposed meeting, they could not be able to organize and arrange for the meeting on the 14th February, 2020 as requested without completely shutting down the University.
18. The Respondent further avers that in view of the short notice, it requested their advocates to write to the Claimant informing them that the date was not convenient and also asking them to provide the Respondent with a list of their staff who are members of the Claimant Union for purposes of organizing future meetings, and to also verify if the 50% threshold for the signing of a Recognition Agreement under the provisions of the Labour Relations Laws had been met.
19. The Respondent states that instead of providing it with the list as requested, the Claimant wrote another letter dated 18th February, 2020 in which it again unilaterally fixed another Union Education



- Meeting for the 4th March, 2020. The Respondent further states that the date was not convenient as there were pre-scheduled events at the University during the proposed times of the meeting, and that the Claimant had not forwarded to the Respondent a list of their staff who it claimed were its members to enable the Respondent organize for the meeting, and also confirm if they could enter into a Recognition Agreement with the Claimant.
20. The Respondent states that the Certificate of unresolved dispute at page 32 of the Claimant's List and Bundle of Documents does not mention the Respondent.
 21. The Respondent confirms that it received a letter dated 18th February, 2020, from the claimant, demanding that the Respondent deducts and forwards union dues from their employees effective February, 2020 in respect of 40 employees who it claimed were its members.
 22. It states further that the said alleged forms and list of the employees that the Respondent was supposed to use to deduct the Claimant's purported dues, were blank and only bore the signature of the Claimant's Secretary General, hence it was impossible to make any deductions as demanded by the Claimant. It states that the Claimant had failed to attach the list of its members and there was no consent from the said purported members, being the Respondent's employees.
 23. The Respondent avers that the Claimant has now proceeded to annex entirely different forms to their claim unlike the ones served on the Respondent; which purportedly now have the names of people it claims to be employees of the Respondent complete with purported signatures.
 24. It is their case that after keenly going through the forms against the Respondent's employee records, the Respondent alarmingly noted that out of forty forms attached, only eight corresponded to the names of employees in their records. It states further that the other thirty two names did not appear in the Respondent's record as their staff and are therefore not the Respondent's employees.
 25. The Respondent further noted that some of the names belonged to cleaners within the University who were employees of the cleaning company which the respondent had contracted to offer cleaning services.
 26. The Respondent states that it forwarded the eight forms to their employees for them to confirm their membership with the Claimant, and also to confirm their alleged instructions to the Respondent to make deductions.
 27. It states further that the said employees shockingly and tellingly denied ever giving such instructions and that in fact, all the employees confirmed that the Claimant had in fact forged their signatures and used their names in the forms without their consent.
 28. The Respondent contends that the Claimant is not entitled to any of the prayers it has sought therein, and prays that the claim be dismissed with costs.

The Claimant's Submissions

29. The Claimant submits that the claim herein is unopposed, as no response to the claim was filed or served upon it by the time of filing its submissions.
30. It is the Claimant's submission that access to the employer's premises by the Claimant Union is well provided for in Law and in particular Section 56 of the *Labour Relations Act*, 2007. It placed reliance in Cause No. 1098 of 2017 at Nairobi between Kenya Shipping Clearing and Warehouse Workers Union and Global Freight Logistics Limited to support this assertion.



31. The Claimant submits that the Check-off forms were served together with the Kenya Gazette Notice No. 158 of the 14th November 2014, hence meeting the threshold set by the mandatory provision of Section 48 of the *Labour Relations Act*, 2007 and Section 19 of the *Employment Act*, 2007.
32. It is the Claimant's submission that the issue of victimization or protection Orders is merited, as there is no provision of the Law that require an employer to start investigating whether employees have joined the union.
33. The Claimant submits that it has recruited 33 employees of the Respondent out of 45 employees, being the total unionisable workforce at the Respondent amounting to 73% over and above the simply majority required in Law.

The Respondent's Submissions

34. The Respondent submits that it is not obligated in any way whatsoever to grant the Claimant access to their employees. The Respondent reiterates that the same was made impossible by the Claimant's illegal and unlawful actions of forgery, that would have actually adversely affected the Respondent, had it not conducted due diligence.
35. The Respondent submits that the Claimant does not have members in its employ and which fact is proven via documents produced herein. It is its further submission that the Claimant and the Respondent do not have a recognition agreement and that Section 54 of the *Labour Relations Act* requires that an employer enters into a recognition agreement with a trade union that shall then officially give rise to legal obligations as between the parties.
36. The Respondent submits further that Section 48 of the *Labour Relations Act* provides for deduction of trade union dues, in instances where membership to the trade union has been obtained voluntarily from the said members and the said membership further verified by the employer and the Employees. It states that a simple majority of employees is required for purposes of entering into a recognition agreement.
37. It is the Respondent's submission that the Claimant has not tendered any evidence to support the allegations of victimization against its alleged members. It further submits that the allegations of victimization are a serious affront to its reputation as an employer of choice that practices the highest achievable professional employment standards.
38. On whether the Respondent should be compelled to sign a recognition agreement with the claimant, the Respondent submits that it has proven that the Claimant does not have unionisable members in its employ, and it therefore follows that the Respondent cannot be compelled to sign a recognition agreement and further a Collective Bargaining Agreement with the Claimant, when it has no members of the Claimant.

Analysis and Determination

39. I have carefully considered the pleadings herein, together with the parties' submissions. The issues that arise for determination are firstly, whether the Claimant's claim is opposed and secondly, whether the Claimant is entitled to the reliefs sought.

Whether the claim is opposed

40. The Claimant's position is that its statement of claim dated 26th February, 2020 is unopposed, as no response to the claim has been filed and served upon it.



41. It is evident from the online case filing system, that the statement of response to the claim filed by the Respondent is dated 15th August, 2024. It goes without saying that the said response was filed years after pleadings had closed.
42. The record however shows that the Respondent sought leave of the court to file the response out of time, and which leave was granted on 13th June, 2024.
43. The Respondent's response to the claim is therefore properly on record, and is confirmation that the claim is defended.
44. The Claimant's claim in this regarded therefore, does not hold water.

Whether the Claimant is entitled to the prayers sought

45. The Claimant seeks four distinct reliefs, which I will proceed to determine individually.

i. An ordered to allow the union to access her members and potential members

46. The Claimant in a letter dated 25th October, 2019 to the Respondent, and which indicates receipt by the Respondent on even date, sought to have meetings with both the Respondent's management and its workers for purposes of trade union education. The record further carries a similar letter written earlier on 26th March, 2018 to the Respondent on the same subject of union education.
47. The record further confirms that the Claimant did report a trade dispute between her and the Respondent to the Minister for labour, who in a letter dated 28th August, 2017 appointed a conciliator, and further indicated the issue in dispute as refusal by the management of the Respondent to allow union officials access to the university for recruitment purposes.
48. It is therefore evident that the Claimant tried to meet both the Respondent and its workers for purposes of union training, recruitment and education, yet nothing shows that any meeting took place between the parties herein, which is indication that the Respondent denied the Claimant access to its members.
49. The Respondent's assertion that the Claimant gave short notices on the meeting is lame and a mere excuse, as each letter suggested meeting dates that were two weeks away and which were in my opinion sufficient time to prepare and hold the meetings.
50. The Respondent has also not shown that it suggested different dates that were convenient to them, and that the Claimant declined to meet them on the suggested dates.
51. This in my view, is sufficient prove that the Claimant is entitled to an order compelling the Respondent to allow it access to its members, and which prayer is hereby granted as prayed.

ii. An order compelling the Respondent to comply with the mandatory provisions of Section 48 of the *Labour Relations Act*, 2007, by deducting and remittance of union dues.

52. The Claimant's case is that it forwarded check-off forms signed by the Respondent's employees recruited by the Claimant union for purposes of deduction of union dues, but the Respondent has since February, 2020 declined to make and remit the union dues.
53. The Respondent on its part, submitted that upon receipt of the check-off forms, it wrote to its members to verify whether they had joined the Claimant union, and that their employees denied having joined, and hence the reason it did not deduct the union dues.



54. Section 48 of the *Labour Relations Act*, provides for union dues in the following words:-

“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.”

55. The Claimant had produced FORM Ss signed on various dates by persons said to be employees of the Respondent, authorizing deduction of dues from their salaries and remission of the same to the Claimant union.

56. The law requires that a union shows that it has recruited more than five members in the service of an employer to qualify for union dues.

57. The Claimant union has placed before court more than five check-off forms; 29 to be specific, forwarded to the Respondent in respect of their workers recruited into the Claimant’s union.

58. Although the Respondent contends that it sought its members’ verification of membership before making the deductions, all an employer is required to do, is forward the Form S/check-off form to the employer. The law does not carry a requirement for an employer to again ask employees to verify if they indeed joined the union. This in my view simply confirms the allegations of coercion and intimidation of the workers not to join the Claimant union.



59. The said forms are uncontroverted and the court has no reason to doubt their authenticity. In the premise, I hold that the Claimant has met the threshold for deduction of union dues having submitted the check-off forms to the employer/Respondent herein, in accordance with Section 48 of the Labour Relations Act, 2007.

iii. That the Respondent be restrained from victimizing, coercing and/or terminating the services of the Claimant's members; and

60. The Respondent confirmed that it wrote to each of their employees who had signed FORM S to further confirm that they had joined the union. This in my view is nothing short of coercion and intimidation considering the parties' bargaining power.

iv. That the Respondent be bound to sign a recognition agreement with the Claimant union.

61. The Respondent correctly submitted that a simple majority of employees is required for purposes of entering into a recognition agreement. In the same breath, the Respondent confirmed that it received forms signed by her employees and did in fact write to the each of the employees requiring them to confirm that they had joined the union.

62. The Respondent produced in evidence letters/internal memos to her employees to confirm that they had joined the union, which is indication that the Claimant union had met the simple majority requirement for purposes of recognition. I therefore return that the number recruited by the Claimant has not been controverted, but has instead been confirmed by the Respondent's own evidence.

63. I thus hold that the union met the legal threshold for recognition by the Respondent.

64. In whole, the Claimant's claim succeeds, and I make orders as follows:-

- a. That the Respondent be and is hereby restrained from victimizing, coercing and/or terminating the services of the Claimant's members
- b. That an order be and is hereby issued compelling the Respondent to allow the Claimant union access to its members
- c. That the Respondent be and is hereby ordered to comply with the mandatory provisions of Section 48 of the Labour Relations Act, 2007, by deducting and remitting union dues to the Claimant union with immediate effect.
- d. That the Respondent is hereby ordered to sign a recognition agreement with the Claimant union.
- e. That in the interest of social partnership, I make no orders on costs.

65. It is so ordered.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 6TH DAY OF FEBRUARY, 2025

C. N. BAARI

JUDGE

Appearance:

Mr. Owiti present for the Claimant

Mr. Omondi h/b for Mr. Kenyatta for the Respondent



Ms Esther S- C/A

