



Thuo & 4 others v Kenya Union of Commercial Food and Allied Workers; National Hospital Insurance Fund & another (Interested Parties) (Employment and Labour Relations Cause E049 of 2023) [2025] KEELRC 279 (KLR) (6 February 2025) (Judgment)

Neutral citation: [2025] KEELRC 279 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E049 OF 2023**

**HS WASILWA, J
FEBRUARY 6, 2025**

BETWEEN

**ANTONY NJUGUNA THUO 1ST PETITIONER
MOHAMED SAID GURE 2ND PETITIONER
NAFTALI MUTHURI KIUNGU 3RD PETITIONER
PETERSON NGARI NJERU 4TH PETITIONER
MILTON AGINA AGWEN 5TH PETITIONER**

AND

KENYA UNION OF COMMERCIAL FOOD AND ALLIED WORKERS RESPONDENT

AND

**NATIONAL HOSPITAL INSURANCE FUND INTERESTED PARTY
CABINET SECRETARY MINISTRY OF LABOUR INTERESTED PARTY**

JUDGMENT

1. The Petitioners instituted this matter through a Petition dated 13th March 2023, claiming that they are male adults of sound mind and employees of the National Hospital Insurance Fund (NHIF), the 1st Interested Party. The Petitioners are also members of the Central Staff Committee of the Union and have filed this Petition in their capacity as employees and representatives of workers who are members of the Union. The Respondent is a registered trade union with members drawn from the 1st Interested Party, while the 2nd Interested Party is a constitutional office holder charged with managing labour matters in Kenya.



2. The Petitioners invoke Articles 2(1), 3, 10, 22(2)(b) and (c), 23, 27, 40, and 41 of *the Constitution* of Kenya, which uphold the supremacy of *the Constitution*, equality, the right to fair labour practices, property rights, and fair administrative action. They argue that their rights under these provisions have been violated by the Respondent's unilateral decision to amend Union dues through Gazette Notice No. 7 of 2021. The Gazette Notice introduced a deduction of 2% of members' gross monthly salaries as union dues, subject to a minimum of Kshs. 200, contrary to Article 5 of the Union's Constitution, which caps union dues at Kshs. 400. The implementation of this change, according to the Petitioners, exposes them to higher deductions without consultation or public participation, in breach of statutory and constitutional provisions.
3. The Petitioners aver that the Respondent acted arbitrarily and without their input or that of other Union members. They further allege that the Respondent's General Secretary issued directives to the Chief Executive Officer of the 1st Interested Party to commence deductions of Kshs. 1,000 from each unionizable employee's salary, contrary to the Union Constitution and without engaging the Petitioners. When the Petitioners raised their concerns with their employer through a letter dated 20th February 2023, the Respondent allegedly organized elections for NHIF shop stewards and the Central Staff Committee to silence the Petitioners and remove them from office.
4. The Petitioners contend that the Respondent's decision violated Section 4 of the *Fair Administrative Action Act*, which requires administrative actions to be lawful, reasonable, and procedurally fair. The Respondent failed to provide prior notice or offer an opportunity for the Petitioners to be heard, as stipulated under Article 47 of *the Constitution*. The Petitioners assert that the Respondent's actions amount to an arbitrary deprivation of property in violation of Article 40 of *the Constitution* and a denial of their right to participate in Union activities under Article 41 of *the Constitution*.
5. The Petitioners seek the following orders:
 1. A declaration that Gazette Notice No. 7 of 2021 is unlawful, null, and void.
 2. An order of certiorari to remove into the Honourable Court and quash the orders contained in Gazette Notice No. 7 of 2021.
 3. An order of mandamus directed to the Respondent to revoke the notice calling for elections of shop stewards and the Central Staff Committee.
 4. An order of mandamus directed to the Cabinet Secretary, Ministry of Labour, the 2nd Interested Party, compelling them to revoke Gazette Notice No. 7 of 2021 and reimburse deductions from Union members.
 5. Any other orders as the Honourable Court deems just.
 6. The 1st Petitioner swore an affidavit dated 13th March 2023, stating that he is the Deputy Chief Shop Steward, and has the authority of the other four Petitioners to swear the affidavit on their behalf. He affirmed that he is fully conversant with the facts of the Petition and verified the correctness of its contents. He further deposed that the facts stated in the affidavit are true to the best of his knowledge, information, and belief, except where otherwise stated, in which case the sources and grounds of belief are disclosed.
 7. The Petitioner further swore a supporting affidavit dated 13th March 2023, stating that he is the 1st Petitioner and the Deputy Chief Shopsteward, with the authority of the other Petitioners to swear the affidavit. He outlined that the Respondent, through a letter dated 16th February 2023, directed the deduction of Kshs. 1,000 from unionisable employees' salaries in



implementation of Gazette Notice No. 7, contrary to Article 5 of the Union Constitution, which caps union dues at a maximum of Kshs. 400. The decision to increase union dues was made arbitrarily, without consultation or input from union members. The Petitioners, as members of the Central Staff Committee, raised concerns in a letter dated 20th February 2023 to their employer, highlighting the lack of participation in the decision-making process. The Petitioner further stated that the decision violated their constitutional rights under Articles 40, 41, and 47, particularly the right to property, fair administrative action, and participation in union activities. He cited legal precedent, including *Kadilo Mwatana & 80 others vs. Chairman Amalgamated Union of Kenya Metal Workers & 4 others* [2014] eKLR, to support the position that increasing union dues without member participation is unlawful and amounts to an infringement of members' rights. He affirmed that the contents of the affidavit are true to the best of his knowledge, information, and belief.

Respondent's Case

8. The Respondent filed a Replying Affidavit dated 20th April 2023, sworn by Bonface M. Kavuvi, the General Secretary of the Kenya Union of Commercial Food and Allied Workers, opposing the Petitioners' application. The Respondent explained that it is a duly registered trade union governed by its constitution under the *Labour Relations Act*, 2007, and that all activities, including amendments to the union's constitution, were conducted lawfully and transparently. The Respondent stated that a National Delegates Conference (NDC) was convened on 20th February 2021 at Tom Mboya Labour College, during which amendments to the union's constitution were unanimously approved. The amendments were subsequently submitted to the Registrar of Trade Unions as per Section 27 of the *Labour Relations Act*, 2007, and were gazetted on 23rd April 2021. The Registrar also issued public notices in major newspapers inviting objections, none of which were raised by the Petitioners or other members. The Registrar later registered the amendments, which superseded the old constitution.
9. The Respondent further stated that following registration, a request was made to the Cabinet Secretary for Labour to gazette new union dues, which was done on 5th January 2022 through Gazette Notice No. 7. The notice directed employers to deduct 2% of gross salaries as union dues, subject to a minimum of Kshs. 200. The Respondent clarified that this decision was lawful under Section 48 of the *Labour Relations Act*, 2007, and that the implementation of deductions followed consultations to cushion members from the effects of COVID-19. The Respondent emphasized that the deductions were phased and supported by communications between the union, members, and the employer.
10. The Respondent argued that the Petitioners' application is frivolous, vexatious, and an abuse of court process, noting that the application for certiorari is time-barred, having been filed more than 14 months after the Gazette Notice was issued. Citing case law, including *Kadilo Mwatana & 80 others vs. Chairman Amalgamated Union of Kenya Metal Workers & 4 others* [2014] eKLR, the Respondent contended that judicial review orders sought by the Petitioners are not tenable, as the union followed the law and no sufficient grounds for injunctive relief have been demonstrated. The Respondent further argued that the shop stewards' elections held on 15th March 2023 render related prayers moot. The Petitioners' attempts to join another union were also highlighted, with the Respondent attaching a letter dated 23rd March 2023 as evidence. It was emphasized that the NDC's decision is binding and can only be challenged in subsequent conferences. The Respondent prayed for the dismissal of the application with costs.



Respondent's Written Submissions

11. The Respondents filed submissions dated 18th December 2024, opposing the Petition and urging the Court to dismiss it with costs. The Petition seeks to have Gazette Notice No. 7 of 2021 declared unlawful, null, and void, alongside orders of certiorari and mandamus compelling the Respondent and the Cabinet Secretary, Ministry of Labour, to revoke the Gazette Notice and reimburse deductions from union members. The Respondents submit that the Petition lacks merit, is moot, and is an abuse of court process.
12. The Respondents argue that Gazette Notice No. 7 of 2021 was issued in full compliance with the [Labour Relations Act](#), Cap 233, Laws of Kenya. The Respondent, a duly registered trade union, lawfully amended its constitution following a National Delegates Conference held on 20th February 2021. The amendments were subsequently submitted to the Registrar of Trade Unions as required by Section 27 of the [Labour Relations Act](#), 2007, and were published in the Kenya Gazette on 23rd April 2021 for public objections. The Registrar further notified the public via Standard Newspaper, Star Newspaper, and People Daily Newspaper on 29th April 2021. Since no objections were received, the Registrar proceeded to register the amendments and issued a Certificate of Registration. Thereafter, by a letter dated 11th June 2021, the Respondent's Secretary-General requested the Cabinet Secretary, Ministry of Labour and Social Protection, to gazette new union dues pursuant to Section 48(1), (2), and (4) of the [Labour Relations Act](#), 2007. The Gazette Notice dated 5th January 2022 directed employers to deduct 2% of union members' gross salaries, subject to a minimum of Ksh. 200. The deductions were phased in following consultations with members to mitigate the economic effects of the COVID-19 pandemic. The Respondents submit that the entire process followed due legal procedure, and the claim that Gazette Notice No. 7 of 2021 is unlawful is baseless.
13. The Respondents further submit that the relief sought by the Petitioners, specifically the quashing of the Gazette Notice, is time-barred under the doctrine of laches and the applicable statutory limitations. The Gazette Notice was published on 5th January 2022, yet the Petitioners filed this suit more than six months later. The relief of certiorari is therefore unavailable, as the six-month limitation period had long lapsed. The Respondents rely on Section 48(2) of the [Labour Relations Act](#), which grants a trade union the authority to request the Minister for Labour to issue an order directing an employer to deduct and remit trade union dues. In line with Section 48(3), an employer is required to commence deductions within 30 days of receiving such notice. The Respondents notified the Petitioners' employer (the 1st Interested Party) of Gazette Notice No. 7 of 2021 via a letter dated 19th July 2022, requiring compliance within the stipulated period. The Respondents provided further letters, marked as Exhibit BK 11(a-e), evidencing discussions on cushioning members from financial strain due to COVID-19.
14. The Respondents also invoke Section 48(6) of the [Labour Relations Act](#), which states that an employer can only stop deducting union dues if an employee submits written resignation from the union. None of the Petitioners provided such notification, nor did they adduce any proof of resignation. Therefore, their employer acted lawfully by deducting dues in accordance with Gazette Notice No. 7 of 2021. The Respondents further cite Section 50(2) of the [Labour Relations Act](#), which lists circumstances under which the Cabinet Secretary for Labour may revoke a Gazette Notice, namely: if the order was obtained through misrepresentation or fraud, if the money is not being remitted to the designated account, or if the funds are being misused. The Petitioners have not proven any of these grounds, making their request for revocation legally untenable. Additionally, Section 50(3) of the Act expressly states that no amount deducted from an employee's wages under this part may be recovered from the employer by that employee. Based on these provisions, the Respondents submit that the Petition is baseless, as the



- Respondent followed due legal process from the amendment of its constitution to the enforcement of union dues deductions.
15. The Respondents further argue that the Petition is moot, as the issues raised have been overtaken by events. The 1st Interested Party, the Petitioners' employer, was disbanded following the enactment of the Social Health *Insurance Act*, No. 16 of 2023. The First Schedule of the Act mandated the winding up of the 1st Interested Party within one year from the Act's commencement on 1st October 2024. The Schedule also provides that staff of the disbanded entity must competitively apply for new positions under the Social Health Authority. Consequently, as of 1st October 2024, the Petitioners ceased to be employees of the 1st Interested Party and, by extension, members of the Respondent union. Since their employment relationship was severed, they no longer have standing to challenge union dues deductions. Moreover, even if the Court were to revoke Gazette Notice No. 7 of 2021, reimbursement of deductions would be impractical since the 1st Interested Party no longer exists. The doctrine of mootness applies, as this Court would be issuing orders with no practical effect.
 16. The Respondents rely on *Natural World Mombasa Safaris Ltd v Karuri (Civil Appeal E045 of 2022)* [2022] KEHC 9979 (KLR), where Lady Justice J. Mulwa stated that a suit is moot if further legal proceedings would have no practical effect or if events have placed the matter beyond the reach of the law. The Court of Appeal in *Okiya Omtatah Okoiti & 2 Others v Attorney General & 4 Others* [2020], citing *Daniel Kaminia & 3 Others (suing as Westland Environment Caretaker Group) v County Government of Nairobi* [2019] eKLR, held that a case is moot when there is no longer an actual controversy between the parties, making any ruling purely academic. The Respondents further cite *National Assembly of Kenya & Another v Institute of Social Accountability & 6 Others* [2017] eKLR, where the court emphasized that the doctrine of mootness prevents courts from issuing orders that serve no practical purpose. In line with these precedents, the Respondents submit that the Petition has been overtaken by events and should be dismissed as an academic exercise.
 17. The Respondents also oppose the Petitioners' request for reimbursement of union dues, arguing that it is legally unsustainable given that the 1st Interested Party has been disbanded. Section 54 of the Social Health *Insurance Act*, No. 16 of 2023 repealed the National Health Insurance Fund *Act, No. 9 of 1998*, further reinforcing that the employer-employee relationship on which this claim is based no longer exists. In *Natural World Mombasa Safaris Ltd v Karuri (Civil Appeal E045 of 2022)* [2022] KEHC 9979 (KLR), Lady Justice J. Mulwa stated that a suit is academic where it lacks practical utility. The same principle was reaffirmed in *Okiya Omtatah Okoiti v President of Kenya & 4 Others* [2019] eKLR, where the Court held that orders should not be issued merely for theoretical satisfaction.
 18. The Respondents finally submit that costs should follow the event. Since the Petition lacks merit and has been rendered moot, the Court should award costs to the Respondents. They rely on the principle that costs are meant to compensate a successful litigant for expenses incurred in defending baseless claims. The Court is urged to dismiss the Petition with costs to the Respondents.

1st and 2nd Interested Parties Grounds of Opposition

19. The 1st and 2nd Interested Parties filed Grounds of Opposition dated 27th November 2024, stating that the Petitioners' suit was filed outside the time prescribed under Section 30 of the *Labour Relations Act*, 2007. As a result, they contend that the suit is fatally defective and cannot be sustained.
20. The 1st and 2nd Interested Parties relied on judicial precedents to support their grounds of opposition. In *James Opiyo & 4 Others v Registrar of Trade Unions & 2 Others* (2017) eKLR, Justice Abuodha, interpreting Section 30 of the *Labour Relations Act*, emphasized that appeals must be filed within 30 days, as the Act does not provide for an extension of time. The court held that equitable relief is



only available to diligent litigants, as equity aids the vigilant, not the indolent. Similarly, in *Wachira Weheire v Attorney General* (2010) AHRLR 185 (KeHC 2010), relying on *Lt Col Ngari Karume & Another v Attorney General*, Nyamu J underscored the importance of timely litigation, noting that delays risk loss or destruction of evidence, which justifies statutory time limits. Further, in *Judicial Service Commission v Gladys Boss Shollei & Another* [2014] eKLR (Civil Appeal No. 50 of 2014), GBM Kariuki J reaffirmed the principles established in *Mumo Matemu v Trusted Society of Human Rights and Anarita Karimi*, stressing that constitutional petitions must be pleaded with specificity and precision, clearly outlining the alleged violations and the legal provisions breached.

1st and 2nd Interested Parties Written Submissions

21. The 1st and 2nd Interested Parties filed written submissions dated 27th November 2024, opposing the Petitioners' Petition dated 13th March 2023 and urging the Honorable Court to strike it out with costs. They argued that the Petitioners had filed the suit outside the time prescribed under Section 30 of the *Labour Relations Act*, 2007, which requires appeals against the Registrar's decisions to be filed within 30 days. They contended that since Gazette Notice No. 7 of 2021 was issued in 2021, but the Petitioners only raised concerns on 20th February 2023—over a year later—the claim was time-barred.
22. In support of their position, they relied on *James Opiyo & 4 Others v Registrar of Trade Unions & 2 Others* (2017) eKLR, where Justice Abuodha held that Section 30 does not provide for an extension of time and that appeals must be lodged within the prescribed period, as equity aids the vigilant, not the indolent. They also cited *Wachira Weheire v Attorney General* (2010) AHRLR 185 (KeHC 2010), where the court, relying on *Lt Col Ngari Karume & Another v Attorney General*, emphasized the importance of timely litigation to prevent loss or destruction of evidence.
23. The 1st and 2nd Interested Parties, therefore, submitted that the Petition was fatally defective, could not be sustained, and should be dismissed with costs.
24. I have examined the evidence and submissions of the parties herein. The main contention by the claimant is that the union dues were increased unfairly without any regard to the law. The petitioners aver that the union dues were increased arbitrarily without them being consulted.
25. The petitioners aver that the respondents breached section 5 of their constitution which caps union dues to 400/-. The petitioners have however chosen not to exhibit a copy of *the constitution* of the respondents which capped union dues to 400/-. A notice was thereafter given to the Registrar of Trade Union dated 26/2/2021 of their intention to amend the respondent's constitution. On 23/4/2021 the Registrar Trade Union issued a gazette notice indicating that the Union had given a notice to amend *the constitution* and anyone who had an objection was required to give their objection within 21 days.
26. The petitioners aver that this notice was never brought to their attention. I have looked at the gazette notice in question. It was dated 23/4/2021 which stated as follows:

Gazette Notice no 3744

The *labour relations act* (No 14 of 2007)

Amendment of *the Constitution* and Name

Notice is given to all members of Kenya Union of Commercial Food and Allied Workers to section 27(4) of the *Labour Relations Act*, that a notice of change of *the constitution* of the union has been received.

Any member intending to raise any objection against the amendments of *the constitution* is required to submit in writing any objections within twenty one (21) days from the date



hereof. The amendments are open for scrutiny from the undersigned office during working hours.

H.N. GICHEHA

REGISTRAR OF TRADE UNIONS

The notice only indicated that the amendments were open for scrutiny from the undersigned during office hours i.e from the Registrar of Trade Unions.

27. Section 27(4) of the *Labour Relations Act* 2007 states as follows:
- (4) Upon receipt of the notice of change of name or constitution, the Registrar shall give a notice of at least twenty-one days in the Gazette and in three daily newspapers of national circulation inviting any objections to the proposed change of name or constitution by members of the trade union and where any such objection is raised, the Registrar shall investigate the complaint and the grounds relied upon and may-
- (a) refer the matter to the Industrial Court;
 - (b) refuse to accept the proposed amendments; or
 - (c) make any orders that he may deem fit in the circumstances.
28. The section obligates the Registrar of Trade Union to issue a notice of atleast 21 days in the gazette and also three daily newspapers of national circulation inviting any objection.
29. From the proceedings, it is clear that the decision to amend union dues was done through gazette notice No 7 of 2021. The gazette notice introduced a deduction of 2% of Members gross salary as union dues subject to a minimum of kshs 200/-
30. Prior to the notice, the respondents aver that they convened a national delegate's conference at Tom Mboya Labour College as per exhibit BK1 where the issue of the amendment of *the constitution* and rules of the union was one of the agenda items. The notice was dated 29/1/2021 and was addressed to all National officials, all National Executive council members, all branch secretaries and all delegates of the respondents union. The delegates meeting was scheduled to be held on 20/2/2021 at Tom Mboya labour college. The minutes of the meeting held on 20/2/2021 are exhibited and show the members who attended national elections and committee members were elected. There was also a vote thereafter, which resulted in the amendment to *the constitution*. It is this amendment that apparently resulted with an increase to union dues to be 2% of the gross salary.
31. The Registrar of Trade Union indeed placed some notices in the classified advertisements of the star newspaper, the standard newspaper and another unknown paper on the 29/4/2021. These captions were placed in small prints but could actually not be visible without great attention.
32. It is not clear whether objection to the constitutional amendments were even received by the Registrar of Trade Union. The petitioners aver that they did not get the notice to objet at all but only learnt of the amendments in 2023 when their employer notified them of the intention to implement the deduction of union dues vide a letter ref N/21/2023/04 of 16/2/2023.
33. The petitioners complained that as workers, they had not been consulted before the union unilaterally decided to change *the constitution* and increase union dues.
34. The shop stewards opposed to the increments raised a complaint on the implementation envisaged and were immediately subjected to election on 21/2/2013 and removed from office.



35. The chronology of events herein raise a legal issue under article 41 of *the Constitution* which states that:

- (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.

36. The right to form and participate in the activities and programmes of a trade union also envisage the right not to join a trade union and not to participate in its activities.

It is clear the respondent's trade union also has rights as per article 41(4) of *the Constitution* which states as follows:

- (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

37. The petitioners are aggrieved by their union's decisions to raise union dues which in their view were exorbitant but which this court cannot interfere with.

38. However, the petitioners also have a right to leave the union and cease being members if they so wish when they feel oppressed. Given this scenario, I find that this court cannot interfere with the running of the respondents union or even vary their union dues, the union having agreed on this. The union has as an obligation to engage its membership before making certain drastic measures.

39. Under section 30 of the *Labour Relations Act*:

Any person aggrieved by a decision of the

Registrar made under this Act may appeal to the Industrial Court against that decision within thirty days of the decision.

The petitioners are indeed aggrieved by the decision to amend the union's constitution. They have a right to come to Court but this should be filed as an appeal. The petitioners chose to file a petition which is irregular.

40. However, in the circumstances of this case, I find that the union followed the law in amending *the Constitution* and so the petition as raised raises prayers, which cannot be granted by this court. The petition must therefore fail and is struck out. There shall be no orders of costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 6TH DAY OF FEBRUARY, 2025.

HELLEN WASILWA

JUDGE

