



**Kenya Union of Entertainment & Music Industry Employees v Regency Slots Ltd  
(Cause E064 of 2024) [2025] KEELRC 1248 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1248 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E064 OF 2024  
BOM MANANI, J  
APRIL 30, 2025**

**BETWEEN**  
**KENYA UNION OF ENTERTAINMENT & MUSIC INDUSTRY  
EMPLOYEES ..... CLAIMANT**  
**AND**  
**REGENCY SLOTS LTD ..... RESPONDENT**

**JUDGMENT**

**Background**

1. The Claimant is a trade union which is registered under the *Labour Relations Act*, Cap 233 Laws of Kenya. It contends that between February and March 2023, it recruited 87 of the Respondent’s employees. It further contends that the recruited employees signed the applicable check-off forms authorizing the Respondent to deduct trade union dues from their salaries and remit the money to the Claimant.
2. The Claimant avers that it delivered the signed check-off forms to the Respondent in February 2023 and December 2023 expecting that the latter would honour the instructions in the forms. However, the Respondent allegedly did not implement the instructions. Instead, it (the Respondent) allegedly began threatening and intimidating the affected employees.
3. The Claimant avers that as a result of these developments, it reported a trade dispute to the Ministry of Labour and Social Protection. The Claimant further contends that although the Ministry appointed a conciliator to resolve the dispute, the matter was not settled forcing the parties to move to court.
4. The Claimant contends that immediately the Respondent was issued with the check-off forms, it began summoning the employees who had joined the Claimant individually and threatening them with dismissal from employment if they did not rescind their decision to join the Claimant. It contends that some employees resisted the threats and have their job security hanging in a balance.



5. The Claimant contends that the Respondent's actions are a threat to the employees' freedom of association protected under articles 36 and 41 of *the Constitution*. It further contends that the Respondent's action is in flagrant disregard of its obligation under section 48 of the *Labour Relations Act* to deduct and remit trade union dues to the Claimant.
6. The Claimant avers that the court should intervene in the matter to protect the rights of the affected workers by restraining the Respondent from victimizing them on account of their decision to join a trade union. As such, it beseeches the court to issue the orders sought through the Statement of Claim.
7. The Respondent has opposed the suit. It has filed a Response to the Memorandum of Claim dated 27<sup>th</sup> February 2024.
8. The Respondent avers that it has no objection to any of its employees joining a trade union. However, it denies that the 87 employees willingly joined the Claimant as alleged by the Claimant.
9. The Respondent denies that the Claimant served it with the check-off forms in February 2023 requiring it to deduct and remit to the Claimant the contested trade union dues. It contends that it first saw the forms when they were delivered to it around 20<sup>th</sup> December 2023.
10. The Respondent avers that when it got the forms in December 2023, it sought the affected employees' consent to the proposed deductions. However, most of them allegedly denied having signed the forms. As such, it contends that it cannot deduct union dues from the employees without their concurrence.
11. The Respondent contends that the check-off forms which the Claimant relies on to push its claim are of questionable pedigree. It contends that the names in the documents were irregularly lifted from its pay-roll and imposed on the forms.
12. The Respondent contends that the forms contain names of all of its employees including those in management. It contends that this further demonstrates that they (the forms) are suspect.
13. For instance, RW1, one Mary Muthoni Mruttu, said that her name had been included in the list as number 82. Yet, she allegedly did not sign the form. The witness posited that the signature appearing against her name was hers.
14. The Respondent contends that no representative of the Claimant visited its premises to recruit members. To support its contention, it avers that none of the individuals that were allegedly recruited by the Claimant have been assigned membership numbers by the Claimant.
15. The Respondent denies that it has threatened the 87 employees with reprisals for joining a trade union as averred by the Claimant. It contends that the freedom of the employees to join a trade union must also be understood to denote the freedom not to join a trade union. As such, the court should not compel the affected employees into being members of the Claimant by imposing the obligation to pay trade union dues on them.
16. The Respondent avers that the purported signatures from the employees were fraudulently procured. As such, the court should not rely on them to issue the impugned orders.
17. The Respondent avers that once it realized that some employees' signatures had been fraudulently procured, it reported the matter to the police. It contends that the police investigations were still ongoing at the time of hearing of the suit. As such, it prays that the claim be dismissed with costs.



## Issues for Determination

18. After analyzing the pleadings and evidence on record, I am of the view that the following are the matters which arise for determination in the suit:-
  - a. Whether the Claimant has demonstrated that it legitimately recruited 87 employees from the Respondent's workforce as its members.
  - b. Whether and when the Claimant shared with the Respondent the check-off forms for the 87 individuals, if at all.
  - c. Whether the Respondent is obligated in law to deduct and remit to the Claimant trade union dues in respect of the 87 individuals.
  - d. Whether the Claimant has presented evidence to demonstrate that its members within the Respondent's workforce have faced victimization because of their decision to join the Claimant union.
  - e. Whether the orders sought by the Claimant should issue.

## Analysis

19. The first issue for determination relates to whether the Claimant has demonstrated that it legitimately recruited 87 employees from the Respondent's workforce as its members. Both parties have taken contrasting positions on the subject with the Claimant contending that the recruitment was genuine whilst the Respondent asserts that the process was fraudulent.
20. Under the *Labour Relations Act*, the process of recruitment of employees as members of a trade union is run substantially by the trade union and not the employer. As such, only the trade union and the individuals who have purportedly been recruited as its members can cogently speak to the validity of the process.
21. The employer, having played no direct role in the exercise, cannot assert that the process was fraudulent. Only the employees who have purportedly been recruited can validly impugn the process in the event it was not genuinely undertaken.
22. In the instant dispute, the Claimant's case is that it undertook recruitment of the Respondent's workforce beginning November 2022. The Claimant contends that by March 2023, it had recruited a total of 87 of the Respondent's employees as its (the Claimant's) members. To support this contention, the Claimant tabled a check-off form containing names of the 87 recruited employees.
23. In response, the Respondent denies that the Claimant undertook the impugned recruitment. It contends that the Claimant did not visit its premises to conduct the purported recruitment. The Respondent further contends that the purported check-off form was lifted from its pay-roll and used to justify the claim for recruitment in a bid to defraud workers.
24. The assertions by the Respondent are quite grave. Yet, it provided no cogent evidence to back them up.
25. As noted earlier, if the recruitment process was fraudulent as claimed, the right individuals to have spoken to the matter would have been the affected employees, not the employer. Despite this reality, the Respondent did not present 85 of the 87 affected employees to back its claims that their signatures had been fraudulently procured.



26. The Respondent only presented two of the persons who allege that their signatures were procured through fraud. It is however noted that the evidence of these two was not helpful in assisting the court to establish the allegations of fraud.
27. Through the evidence it presented to court, the Respondent implied that none of its employees interacted with the Claimant purportedly for recruitment. For example, through RW1's written witness statement, the Respondent insinuates that until the Claimant presented to it (the Respondent) the impugned check-off forms in December 2023, its employees were unaware of any recruitment drive by the Claimant.
28. However, during the trial, it turned out that the picture painted by the Respondent was misleading. For instance, during cross examination of RW1, she conceded that she had visited the Claimant's offices in January 2023 and had even been given "money for lunch".
29. The question that begs an answer is what was the mission of this witness when she visited the Claimant's offices in January 2023? Even assuming that it is the Claimant who invited her to its offices, what was the purpose for the invite and why did she honour it and even accept the alleged lunch token from the Claimant's officers when she was aware that as a member of management, she was not entitled to involve herself in the Claimant's activities? And why did she conceal this information from the court whilst preparing her written witness statement?
30. Whilst the Respondent contends that most of the employees denounced the impugned signatures, it did not present any sworn instruments by them to affirm this assertion. Apart from the two individuals who testified to disown their signatures (and one of whose evidence has obvious credibility issues), none of the remaining 85 individuals testified in court.
31. The court notes that following the standoff between the parties, the Claimant reported a trade dispute to the Ministry of Labour and Social Protection. Following this report, a conciliator was appointed to adjudicate on the matter.
32. However, it is noteworthy that the Respondent declined to submit to the conciliator's jurisdiction contending that there was no trade dispute between the two. In the conciliator's final remarks, he observed that the Respondent's conduct hampered meaningful resolution of the dispute.
33. It is noteworthy that whilst the Respondent contends that the signatures of the 87 employees were forged, only one of them reported the alleged forgery to the police. There is no proof that any of the other 86 individuals filed a report of alleged forgery with the police.
34. Forgery is a criminal act which impacts on an individual natural or corporate person. As such, it is expected that a person who alleges to be a victim of fraud will make an individual report to the police. The report cannot be communal.
35. There was no evidence tendered to suggest that the Claimant's officials were charged with a criminal offense of forgery following the allegations of fraud against them. Further, despite the Respondent maintaining that it had reported the purported forgery to the police for forensic analysis, no forensic report was tendered in evidence to speak to the matter. And neither was a forensic expert called to affirm the contents of such report, if at all. Consequently, based on the evidence before me, I arrive at the conclusion that the Respondent's assertions that the signatures of its employees on the impugned check-off form were procured through fraud is unfounded and incredible.
36. Section 48 (6), (7) & (8) of the [Labour Relations Act](#) provides for the procedure for withdrawal of membership from a trade union irrespective of how the membership was procured. It provides as follows:-



“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.

A notice of resignation referred to in subsection (6) takes effect from the month following the month in which it is given.

An employer shall forward a copy of any notice of resignation he receives to the trade union.”

37. It is noteworthy that despite the Respondent’s assertion that the Claimant procured the signatures of its employees fraudulently, none of the 87 employees invoked the foresaid provisions of statute to terminate the alleged irregular relation with the Claimant. Instead, the Respondent sought to rely on a list of nine (9) individuals as evidence of renunciation of the employees’ membership to the Claimant.
38. However, the aforesaid document was neither addressed to the Respondent nor copied to the Claimant as required under section 48 of the *Labour Relations Act*. Further, apart from Mary Muthoni whose evidence has been demonstrated to have credibility issues, none of the other nine (9) individuals whose names appear on the list testified before court to validate it.
39. The foregoing casts aspersions on the Respondent’s contention that the impugned signature were procured through fraud. If the employees’ signatures had been fraudulently procured, why was it not possible for them to simply revoke the relation that had been purportedly created with the Claimant by writing to the Respondent to withdraw their impugned union membership and copying the Claimant in the correspondence as required under the law?
40. It is the Respondent who asserted that the employees’ signatures in question had been forged. As such and by virtue of section 107 of the *Evidence Act*, the burden of proof lay with it (the Respondent) to tender cogent evidence to establish this claim.
41. As noted earlier, allegations of fraud are grave as they imply commission of a criminal offense. As such, the individual alleging fraud bears a higher standard of proof than the ordinary one of a balance of probabilities to establish the allegations (*Orieny & another v National Bank of Kenya (Civil Appeal E016 of 2023) [2024] KEHC 6002 (KLR) (20 May 2024) (Judgment)*).
42. The court is not satisfied that the Respondent has discharged this burden. In the absence of cogent proof of fraud, the court rejects the Respondent’s contention that its employees’ signatures were procured through fraud. Having regard to the foregoing, the court is persuaded that the impugned recruitment process was legitimately undertaken and was largely voluntary.
43. The second issue for determination is whether and when the Claimant shared with the Respondent the check-off forms for the 87 individuals, if at all. The Claimant avers that it first delivered the check-off forms to the Respondent on 20<sup>th</sup> February 2023 to enable it (the Respondent) to commence deductions of the trade union dues but the Respondent disregarded the instructions. However, when cross examined about the practicability of having submitted a form with 87 names on 20<sup>th</sup> February 2023 when the check off forms tendered in evidence show that only 42 individuals had been recruited at the close of February 2023, the Claimant’s witness stated that recruitment of members is a continuous process and that the suggestion that the forms that were submitted on 20<sup>th</sup> February 2023 contained names of 87 individuals may have been in error.
44. The foresaid notwithstanding, the Claimant avers that it submitted the full check-off forms on 20<sup>th</sup> December 2023. On the other hand, despite contesting its authenticity, the Respondent affirms that it indeed received the list that was submitted to it in December 2023 containing names of 87 individuals.



45. From the evidence on record, it is apparent that by close of February 2023, the Claimant had only recruited a total of 42 individuals. This is self-evidence from the check-off forms which were tendered in evidence. As such, the contention that it (the Claimant) forwarded to the Respondent check-off forms for 87 individuals on 20<sup>th</sup> February 2023 is evidently incorrect.
46. That said, the court accepts the explanation by the Claimant's witness that recruitment is a continuous process and that the aforesaid statement may have been made in error. The court further notes that despite the dispute regarding the authenticity of the forms, both parties agree that the Claimant served the Respondent with the forms with the 87 names on 20<sup>th</sup> December 2023. As such, the court arrives at the conclusion that the check-off forms with the 87 names were shared with the Respondent on 20<sup>th</sup> December 2023 and not 20<sup>th</sup> February 2023.
47. The third issue for determination is whether the Respondent is obligated in law to deduct and remit to the Claimant trade union dues in respect of the 87 individuals. By virtue of section 48 of the [Labour Relations Act](#), once a trade union registers member from an employer's workforce, the employer is obligated to deduct and remit to the trade union the trade union dues for the said employees. However, in order for this obligation to crystalize, the trade union must have applied for a Ministerial Order from the Ministry of Labour requiring the employer to deduct and remit to it (the trade union) the aforesaid dues.
48. There is nothing on record to confirm that the Claimant complied with this requirement of law. I have not seen a request by it (the Claimant) to the Cabinet Secretary Ministry of Labour to issue the Respondent with the aforesaid Ministerial Order. Neither have I seen a copy the Ministerial Order directing the Respondent to make the impugned deductions.
49. In the premises, I find that the Claimant's request for a court order to compel the Respondent to deduct and remit to it the contested dues is premature. As such, the suit fails on this ground.
50. The next issue for determination is whether the Claimant has presented evidence to demonstrate that its members within the Respondent's workforce have faced victimization because of their decision to join the Claimant union. Although the Claimant spoke of victimization of its members at the workplace, it did not present cogent evidence to support this contention. Absent this evidence, the court has no basis upon which it may issue an order to restrain the Respondent from doing that which it has not been shown to be intent on doing. As such, the claim also fails on this account.
51. The foresaid notwithstanding, the court takes note of the Respondent's position that it is not opposed to its employees joining a trade union of their choice. As a result, whilst not issuing any injunctive orders against the Respondent as requested, the court reiterates the obligation on the Respondent to allow members of staff to exercise their freedom to join or not join a trade union of their choice unhindered.
52. The final issue relates to whether the orders sought by the Claimant should issue. Whilst addressing the other issues in the preceding section of this judgment, the court has largely spoken to this issue. As such, I will treat it (the issue) as a summation of the decision in the section below.

### **Determination**

53. Having regard to the evidence before court, it (the court) is convinced that the Claimant legitimately recruited the 87 members of the Respondent's workforce.
54. Further, the court finds that the Claimant duly notified the Respondent of this fact when it delivered to it the full list of recruited members on 20<sup>th</sup> December 2023.



55. As such, all factors remaining constant, the Respondent would be under obligation to deduct trade union dues from the aforesaid employees and remit them to the Claimant.
56. However and as noted earlier, there is no evidence that the Claimant requested for and served on the Respondent a Ministerial Order under section 48 (2) & (3) of the Labour Relations Act requiring the Respondent to effectuate the deduction process. Until this is done, the Respondent is under no legal obligation to make the impugned trade union deductions and remit them to the Claimant.
57. Although the Claimant spoke of victimization of its members at the workplace, it did not present cogent evidence to support this contention. In the absence of this evidence, the court cannot issue an order to restrain the Respondent from not doing that which it has not been cogently shown to be doing.
58. Whilst not issuing any injunctive orders against the Respondent as requested, the court reiterates the obligation on the Respondent to allow its members of staff to exercise their freedom to join or not join a trade union of their choice unhindered.
59. For the avoidance of doubt and on account of the Claimant's failure to issue the relevant Ministerial Order to the Respondent under section 48 (2) & (3) of the Labour Relations Act and to provide cogent proof of victimization of its members, the suit is considered to have failed.
60. Each party to bear own costs of the case.

**DATED, SIGNED AND DELIVERED ON THE 30<sup>TH</sup> DAY OF APRIL, 2025**

**B. O. M. MANANI**

**JUDGE**

In the presence of:

..... for the Claimant

.....for the Respondent

Order

In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

