



**Banking Insurance & Finance Union [Kenya] v Fortune Sacco Society Limited
(Cause E783 of 2023) [2025] KEELRC 1184 (KLR) (28 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1184 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E783 OF 2023**

J RIKA, J

APRIL 28, 2025

BETWEEN

BANKING INSURANCE & FINANCE UNION [KENYA] CLAIMANT

AND

FORTUNE SACCO SOCIETY LIMITED RESPONDENT

JUDGMENT

1. The issue in this dispute, as stated in the Statement of Claim dated 28th September 2023, is refusal by the Respondent, to deduct and remit trade union dues to the Claimant.
2. The Claimant states that it has a recognition agreement with the Respondent, executed on 4th October 2002.
3. Parties have subsequently, executed and registered collective bargaining agreements. The last covered the period 1st January 2020 to 31st December 2023.
4. In May 2023, the Claimant realized it had only 14 members working for the Respondent, who were paying trade union dues.
5. It embarked on a recruitment exercise, and managed to recruit 89 Employees.
6. It forwarded check-off forms with regard to the newly recruited members, to the Respondent. The Claimant communicated to the Respondent to deduct and remit trade union dues, in accordance with Section 48 [3] of the *Labour Relations Act*.
7. There is a ministerial order, under gazette notice number 516 of 2009, authorizing deductions.
8. The Respondent stated it would dismiss, or fail to renew the contracts, of Employees who had been recruited. It completely refused to deduct and remit trade union dues.



9. Employees, whether on temporary, casual, fixed term contract, or permanent and pensionable terms, have a right to join a trade union of their choice.
10. The Claimant prays for orders: -
 - a. The Respondent to deduct and remit trade union dues, with regard to the 89 Employees.
 - b. The Respondent to pay to the Claimant, from its own funds, any trade union dues not deducted, from July 2023 to-date.
 - c. A permanent injunction restraining the Respondent from harassing, intimidating, victimizing, discriminating or termination the contracts of the Employees, on account of their association with the Claimant.
 - d. Costs.
 - e. Any other suitable order.
11. The Respondent's position is that Employees recanted their membership of the Claimant, voluntarily. The Respondent did not have obligation, to deduct and remit trade union dues to the Claimant, with respect to Employees who are no longer members of the Claimant.
12. The Claimant approached the Respondent in February 2020, seeking recruitment of Employees. Parties agreed on a collective bargaining agreement lasting 4 years. The Claimant went on to recruit 89 Employees of the Respondent as members.
13. The 89 Employees joined under the impression that the Claimant would protect them, from the high taxes imposed on them by the Government. They were also misled into thinking that they were joining a welfare group.
14. The Employees soon realized that they could not bear the burden of high taxation and trade union dues, imposed on their salaries.
15. They therefore terminated their membership of the Claimant, and authorized the Respondent, to cease deductions.
16. The Respondent submits that the recognition agreement between the parties, became frustrated by operation of the law, after the Employees resigned from the Claimant, eroding its simple majority.
17. The Respondent submits that the Claim has no merit. The Claimant is not entitled to deduction and remittance of trade union dues. It is proposed to have the Claim dismissed.
18. The Respondent states at paragraph 46 of its submissions dated 25th September 2024, that costs should be awarded to the Claimant.
19. The Court directed on 19th June 2024, that the Claim is considered and determined on the strength of the parties' pleadings, affidavits and submissions. The Claim was last mentioned on 18th December 2024, when parties confirmed filing and exchange of their submissions.

The Court Finds: -

20. Parties have a recognition agreement, signed on 4th October 2002.
21. They subsequently negotiated and executed collective bargaining agreement, which covered a period of 4 years, running from 1st January 2020, to 31st December 2023.



22. They have an ongoing recognition agreement, and collective bargaining structures, which have not been frustrated by the operation of the law, as submitted by the Respondent.
23. There is no rival trade union, claiming to have taken over representation of the Respondent's Employees, from the Claimant.
24. The Claimant has not been de-recognized, through an order of the Court, or directive from the National Labour Board. It remains the sole collective bargaining agent, recognized by the Respondent.
25. It did not set out in 2020 to recruit new members, to gain recognition; it was already recognized by the Respondent. It recruited new members to sustain its numbers, because recruitment is a continuous exercise, and those in employment, in 2002, were not likely to be the same Employees working for the Respondent, in 2020. At least a good number of the Employees would have left employment, for one reason or the other, after 18 years.
26. Fresh recruitment however, was not intended to open a fresh recognition dispute between the parties. It was not intended to signal to the Respondent, that the recognition agreement had become obsolete and inoperative.
27. There is a ministerial order issued under Section 48[3] authorizing the Employer to deduct and remit trade union dues to the Claimant. The order contained in gazette notice number 516 of 2016 and has not been varied or rescinded. It applies to the Respondent.
28. The law under Section 48 [6] of the Act, is that an Employer may not make deduction from an Employee who has notified the Employer of his resignation from the trade union.
29. The notice takes effect from the month it is shown to have been given.
30. The Employer shall, under Section 48 [8] forward a copy of the notice of resignation, to the trade union.
31. The Respondent has exhibited letters of resignation from the Claimant, allegedly authored by the Employees who had been recruited by the Claimant Union.
32. There is no evidence on record from the Employees themselves, denying that they resigned from the Claimant Union, or that they were compelled by the Respondent to resign.
33. The Claimant's prayer for deduction of trade union dues in arrears, is not safe to grant, taking into account that the Employees may well have voluntarily resigned. The Respondent would be engaging in an unlawful act, it was to deduct trade union dues and remit to the Claimant, under Section 19 of the *Employment Act*.
34. Section 19 [6] of the *Employment Act*, was held by the Court of Appeal, in *Lochab Brothers Limited v. Transport Workers Union* [2024] KECA 965 [KLR], to kick in, only where proceedings have been brought against the Employer for failing to remit deductions, and the Employer convicted and fined for the offence.
35. The Claimant is protected under Section 49 [5] of the Act, which compels the Respondent to deduct from an Employee's salary, agency fees, where an Employee has recanted union membership, but continues to enjoy a collective bargaining agreement negotiated by the trade union. The law is categorical that any member who resigns, is immediately liable to be deducted agency fee.
36. The Employees who wish to continue subscribing to the Claimant are also allowed to pay their subscriptions directly to the Claimant.



37. The law does not encourage free-riding, where non-union members freely enjoy terms and conditions of service, negotiated collectively for the benefit of all unionisable labour, within enterprises.
38. The trade union must be compensated by non-members as well as members. An Employer has an obligation to deduct and remit trade union dues with regard to members, and deduct and remit agency fees, with regard to non-union members, who are beneficiaries of the collective bargaining agreement in place.
39. The Employees who resigned cannot be rid of what they consider as burdensome trade union dues, while free-riding and enjoying benefits crafted by the Claimant Union.
40. The Claimant is the recognized trade union at the workplace, and has registered a collective bargaining agreement, which no doubt covers all unionisable labour, not just the unionized labour. It would merit agency fees, from resigned or other non-union members, beneficiaries of the Claimant's hard work.
41. But the Claimant has not pleaded agency fees. The Court has explained that it would be unsafe, to direct that the Respondent deducts and remits trade union dues, with respect to Employees whose membership of the Claimant, is uncertain.
42. The ministerial order under gazette notice number 516 of 2009, relates to trade union dues. The Court has not seen a ministerial order issued under Section 49 [1] with respect to agency fees.
43. If there is such an order, the Claimant may pursue agency fees with respect to all unionisable non-members, who are enjoying benefits under the collective bargaining agreement.
44. The Claim has otherwise not been established. Complaints about threats, intimidation, victimization and discrimination of Employees, on account of their association with the Claimant, would have been best communicated to the Court through viva voce or affidavit evidence, of some of the affected Employees.

It is Ordered: -

- a. The claim is declined.
- b. The Claimant, if need be, can file a fresh claim for agency fees.
- c. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, THIS 28TH DAY OF APRIL 2025.

JAMES RIKA

JUDGE

