



Bakery Confectionary Food Manufacturing & Allied Workers Union (K) v Karibu Flour Mills Limited (Cause 132 of 2023) [2025] KEELRC 1089 (KLR) (3 April 2025) (Judgment)

Neutral citation: [2025] KEELRC 1089 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 132 OF 2023
M MBARÚ, J
APRIL 3, 2025

BETWEEN
BAKERY CONFECTIONARY FOOD MANUFACTURING & ALLIED
WORKERS UNION (K) CLAIMANT
AND
KARIBU FLOUR MILLS LIMITED RESPONDENT

JUDGMENT

1. The issue in dispute herein is the respondent's refusal to sign the Recognition Agreement and to deduct and remit trade union dues.
2. The claimant filed the claim on 4 December 2023 and served the respondent. There is no response. On 26 February 2025, when the matter came up for hearing, the respondent filed a Notice of Preliminary Objections, which is addressed separately.
3. The claim is that the claimant is a trade union mandated to represent employees in bakeries, confectionery, food and related industries. The respondent is a limited liability company in the milling business.
4. The claim is that in September 2022, the claimant recruited 86 out of the respondent's 100 employees into its membership. This afforded the claimant the right of recognition upon attaining a simple majority under Section 54 of the *Labour Relations Act* (LRA). Despite forwarding the check-off forms and a draft Recognition Agreement to the respondent, the respondent has refused and failed to deduct and remit trade union dues or sign the agreement.
5. On 1 October 2022, the claimant invited the respondent to execute the draft recognition agreement, but declined. Under sections 48 and 54 of the LRA, upon attaining the simple majority of the respondent's unionisable employees as its members, the claimant is entitled to union dues and recognition.



6. On 18 October 2022, the claimant reported a dispute to the Minister. Through a letter dated 3 November 2022, the Minister appointed a conciliator to resolve the dispute. Various meetings were held, including on 29 November 2022 and 10 February 2023, without a resolution. The respondent failed to attend or make any submissions.
7. The respondent has refused and failed to deduct and remit trade union dues to the claimant based on the check-off forms.

The claimant is seeking the following orders;

- a. An order directing the respondent to execute a formal recognition agreement with the claimant within 14 days of the judgment;
- b. An order requiring the respondent to deduct and remit trade union dues in respect of the names of employees who have subscribed to the membership of the claimant;
- c. Costs of the suit;
- d. Any other order that the court may deem fit to grant.

The claimant relied on the filed records.

8. The claimant also filed written submissions that section 54 of the LRA mandates an employer to recognize a trade union for purposes of collective bargaining. The claimant has recruited 86 employees out of the respondent's 100 employees, which forms an 86% above the sample majority necessary for recognition as held in *Bakery Confectionary Food Manufacturing & Allied Workers Union (K) v Sameer Agriculture & Livestock Limited*, Cause No.469 of 2009.
9. The employer is the custodian of employee records under Section 74 of the *Employment Act*. The respondent has not defended the claim, and the orders sought should be issued.
10. Under Section 48 of the LRA, upon recruiting members within the respondent's employment, the claimant is entitled to a deduction and remittance of trade union dues. The respondent was served with check-off forms and has refused to deduct and remit dues as held in *Kenya Game Hunting & Safari Workers Union v Micato Safaris* [2013] eKLR.

Determination

11. An employer's recognition of a trade union is regulated in law under Section 54 of the LRA. Upon the trade union attaining a simple majority of membership within the unionisable cadre of the employees, the employer is required under the law to recognize the union. In the case of *Teachers Service Commission v Kenya National Union of Teachers (KNUT) & 3 others* [2015] KEELRC 863 (KLR), the court emphasized that upon the recognition of a trade union by an employer, parties are allowed to proceed and negotiate a collective agreement on terms and conditions of the employees.
12. In the case of *Kenya Hotels and Allied Workers Union v Diani Sea Resort T/A Carslake Nominee Limited* [2015] KEELRC 528 (KLR), the court held that Section 54 of the LRA requires an Employer to grant Recognition to a Trade Union once a Trade Union has recruited a simple majority of the Employer's Unionisable Employees.
13. However, this process is not mechanical. The trade union must ascertain its membership within the unionable cadre vis-à-vis the total number of employees of the entity who are its members. The claimant's case is that it has recruited 86 employees out of the total number of 100 employees of the respondent. There is no desegregation of these numbers.



14. The check-off forms filed are all dated 30 September 2022, and the listed employees signed them on the same date.
15. With the fluidity of employment, the shop floor changes daily, weekly, and monthly. The check-off forms were signed on 30 September 2022. The matter was reported to the Minister on 18 October 2022.
16. Nothing demonstrates the current status of the claimant's membership within the respondent from 30 September 2022 to 4 December 2023, when the claim was filed.
17. The claimant opted to rely on the filed records to support its case. The Verified Affidavit of Danchael Mwangure supports the claimant. There is no witness statement to support the averments in the claim. Relying on the records filed to issue the orders sought will not meet the ends of justice, taking into account possible changes on the shop floor.
18. To secure each party and to allow the court not to issue an empty order of recognition, the claimant shall return to the shop floor, ascertain its membership and seek recognition by the respondent. Obtain the numbers within each given month as a basis for the simple majority claimed.
19. Ultimately, the claimant is at liberty to apply the provisions of Section 52 of the LRA;

Nothing in this Part prevents a member of a trade union from paying any dues, levies, subscriptions or other payments authorised by *the constitution* of
The trade union directly to the trade union.
20. This will have a two-fold effect. Ascertain the number of members and the continuity of employment.
21. The above put into account, the court brings to the attention of the respondent the provisions of section 46 (d) and (h) of the *Employment Act*;

The following do not constitute fair reasons for dismissal or for the imposition of a disciplinary penalty—

 - (d) The participation or proposed participation of an employee in the activities of a trade union outside working hours or, with the consent of the employer, within working hours;
 - (h) an employee's initiation or proposed initiation of a complaint or other legal proceedings against his employer, except where the complaint is shown to be irresponsible and without foundation; o
22. The employees listed in the check-off forms have filed the instant suit to assert their rights at work secured under Article 41 of *the Constitution* and should not be victimized for agitating for their rights. Whether successful or not, the action taken should not be a source of victimization, as such action is protected in law.
23. Accordingly, the orders sought shall not be issued as couched. The claimant shall return to the shop floor and audit its membership. There will be no orders on costs.

DELIVERED IN OPEN COURT AT MALINDI THIS 3 DAY OF APRIL 2025.

M. MBARŪ

JUDGE



In the presence of:

Court Assistant: Davies Wekesa

