



**Public Transport Operators Union v Apollo Tours & Travel Ltd;
Transport Workers Union Kenya & another (Interested Parties) (Cause
E882 of 2021) [2025] KEELRC 1637 (KLR) (30 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1637 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E882 OF 2021
SC RUTTO, J
MAY 30, 2025**

BETWEEN

PUBLIC TRANSPORT OPERATORS UNION CLAIMANT

AND

APOLLO TOURS & TRAVEL LTD RESPONDENT

AND

TRANSPORT WORKERS UNION KENYA INTERESTED PARTY

UNIONISABLE EMPLOYEES OF APOLLO TOURS AND

TRAVEL INTERESTED PARTY

JUDGMENT

1. The Claimant moved this Court vide a Statement of Claim dated 27th October 2021, seeking the following reliefs:
 - a. That a permanent injunction be and is hereby issued restraining and/or prohibiting the Respondent from making wrongful, unauthorized and illegal deductions from the salaries of the Applicant's (sic) members and or any other member of the Applicant (sic) union.
 - b. That the Respondent be and is hereby directed to continue deducting trade union dues from the applicant (sic) members in strict adherence to the Form S and to ensure the prompt remittance of the same to the Applicant union in accordance with the law.
 - c. That the costs of the matter be provided for.



2. In the Statement of Claim, the Claimant has averred that on or about October 2020, it recruited into its membership the Respondent's employees totaling 130 or thereabout by the said employees signing Form S (check off forms) which were to be submitted to the Respondent.
3. The Claimant avers that the Respondent acknowledged receipt of the check-off forms and commenced deduction of the trade union dues.
4. That despite the Respondent commencing the deduction of trade union dues, the same were not remitted and have not been remitted to date to the Claimant union.
5. The Claimant contends that no plausible reason has been proffered by the Respondent for its unprocedural action of withholding its trade union dues.
6. The Respondent countered the Claim through its Response dated 29th July 2024, in which it contends that this matter is res judicata as the issues were dealt with in Nairobi ELRCC E694 of 2020; Transport Workers Union Kenya (TAWU) v Public Transport Operators Union (PUTON) & Apollo Tours, where the parties were similar to the ones in the instant suit.
7. The Respondent avers that by a Ruling delivered on 16th September 2020, by Hon. Justice Nduma Nderi, the parties were directed to appear for conciliation before the Ministry of Labour.
8. That after the court ordered conciliation, the conciliator issued his report dated 21st June 2021, giving the following recommendations:
 - a. Puton should respect boundaries and confine itself to its constitutional areas of jurisdiction.
 - b. Tawu should continue to engage the management of Apollo in Collective Bargain which will culminate in the signing of the CBA
 - c. Apollo should respect the recognition agreement between itself and TAWU.
9. The Respondent further avers that the Conciliator found that *the Constitution* of the Claimant restricted itself to only public transport operators, which does not include Tours and Travel employees, which the Respondent deals with.
10. According to the Respondent, the said report was implemented as directed by the conciliator. Subsequently, the Respondent herein and the 1st Interested Party executed a Collective Bargaining Agreement dated 19th December 2023 which was registered in court on 28th February 2024.
11. Consequently, the Respondent maintains that the instant suit has been overtaken by events.
12. In the Respondent's view, it has been needlessly drawn and embroiled in what is really a jurisdictional war between two unions.
13. It is worth pointing out that the 1st and the 2nd Interested Parties did not file Responses to the Memorandum of Claim. This was despite being given leave to do so by this Court on numerous occasions.
14. When the matter came up for hearing on 17th December 2024, all parties consented to have the matter determined by way of documentary evidence in terms of Rule 59 of the Employment and Labour Relations Court (Procedure) Rules, 2024.
15. Subsequently, the Court directed the parties to file and exchange written submissions within specified timelines. Notwithstanding the Court's directions, only the Respondent filed written submissions.



Submissions

16. It was submitted by the Respondent that the issues raised in the main suit were adjudicated upon in Nairobi ELRCC E694 of 2020; Transport Workers Union Kenya (TAWU) v Public Transport Operators Union (PUTON) & Apollo Tours. According to the Respondent, the suit stands as res judicata and should be dismissed accordingly.
17. The Respondent further argued that the Claimant lacks locus standi to institute the present suit as its constitution does not extend to the representation of employees in the tours and travel sector. In the same vein, the Respondent submitted that the Claimant's involvement in this matter is unwarranted and is an attempt to encroach upon the jurisdiction of the 1st Interested Party, which is the legally recognized trade union representing its employees.
18. It was the Respondent's further position that there exists no cause of action against it and no claim has been established to justify its continued involvement in these proceedings.

Analysis and Determination

19. I have considered the pleadings, the evidentiary material on record as well as the Respondent's submissions and find the issues falling for the Court's determination as being: -
 - a. Whether the suit herein is res judicata;
 - b. Whether the Claimant is entitled to the reliefs sought;

Res judicata?

20. It is the Respondent's case that the instant suit is res judicata as the issues herein were dealt with in NAIROBI ELRCC E694 OF 2020; Transport Workers Union Kenya (TAWU)vPublic Transport Operators Union (Puton) & Apollo Tours, where the parties were similar to the ones in the instant suit.
21. According to the Respondent, the matter was referred to conciliation and recommendations of the conciliator were fully implemented, culminating in the execution of a CBA between the Respondent and the 1st Interested Party dated 19th December 2023.
22. The doctrine of "res judicata" is provided for under Section 7 of the [Civil Procedure Act](#) as follows:

[7]No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.
23. Addressing the question of res judicata, the Supreme Court of Kenya in the case of John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others (Petition 17 of 2015) [2021] KESC 39 (KLR) (Civ) (6 August 2021) (Judgment) held as follows:

"For res judicata to be invoked in a civil matter the following elements must be demonstrated:

 - a) There is a former judgment or order which was final;
 - b) The judgment or order was on merit;
 - c) The judgment or order was rendered by a court having jurisdiction over the subject matter and the parties; and



d) There must be between the first and the second action identical parties, subject matter and cause of action.”

24. Fundamentally, res judicata is a bar to subsequent proceedings involving same issue as had been finally and conclusively decided by a competent court in a prior suit between the same parties or their representatives.
25. It has been held in a long line of authorities that the rationale behind res judicata is based on the public interest that there should be an end to litigation, coupled with the interest to protect a party from facing repetitive litigation over the same matter. Res judicata ensures the economic use of the court’s limited resources and timely termination of cases.
26. In the instant suit, the primary order sought by the Claimant is an order relating to the deduction and remittance of trade union dues from the salaries of the Respondent’s employees who have signed check-off forms to that effect.
27. With respect to ELRC E694 of 2020; Transport Workers Union Kenya (TAWU)vPublic Transport Operators Union (Puton) & Apollo Tours, the 1st Interested Party, which was the Claimant in that case, was seeking inter alia, an order of declaration that it was the rightful union in the sector of tours and travel business, an order directing the Respondent to deduct and remit to its account, trade union dues as well as an order restraining the Claimant herein from encroaching on its (1st Interested Party) membership.
28. It is evident from the two suits that the common issue in dispute is the deduction and remittance of trade union dues. The only point of divergence is that it is the 1st Interested Party that was seeking the order of deduction and remittance of trade unions in ELRC E694 of 2020, while in the instant case, it is the Claimant that is seeking similar orders.
29. It is also apparent from the record that the matter in ELRC E694 of 2020 was not adjudicated on its merits by a court of competent jurisdiction but rather was resolved through conciliation.
30. Further, it is discernible from the conciliator’s report that the conciliator only confined himself to the issue of encroachment on union membership, collective bargaining between the Respondent and the 1st Interested Party and respect for the recognition agreement between the Respondent and the 1st Interested Party.
31. It is therefore evident that the issue with respect to the deduction and remittance of trade union dues which is the main issue in dispute herein, was not resolved hence remains outstanding.
32. In light of the foregoing reasons, the Court finds that the doctrine of res judicata does not apply in this case.

Reliefs?

33. The primary relief sought by the Claimant herein is the remittance of trade union dues deducted from the Respondent’s employees, who the Claimant avers, joined its membership by executing check-off forms to that effect.
34. It is the Claimant’s case that it recruited into its membership close to 130 employees from the Respondent’s workforce, and despite the Respondent effecting trade union dues deductions from the said employees, it has failed to remit the same to the Claimant.



35. Notably, the Respondent has not disputed the Claimant's assertions. Its only contention is that the matter is res judicata and that it has since executed a fresh CBA dated 19th December 2023, with the 1st Interested Party.
36. It is worth pointing out that *the Constitution* of Kenya, 2010 and the *Labour Relations Act* acknowledge and guarantee freedom of association, which includes the right of an employee to belong, or not belong to a trade union.
37. Specifically, the right to form, join or participate in the activities and programmes of a trade union is guaranteed under Article 41(2) (c) of *the Constitution*. This Constitutional provision reflects the position in Section 4 (1) of the *Labour Relations Act*, which is couched as follows:
- (4) (1) Every employee has the right to—
- (a) participate in forming a trade union or federation of trade unions;
 - (b) join a trade union; or
 - (c) leave a trade union.
38. This right is further protected under Article 36 of *the Constitution* as it guarantees freedom of association.
39. In light of the foregoing constitutional and statutory provisions, it follows that by executing the check-off forms, the Respondent's employees had expressed their desire to join the Claimant Union. Put another way, the said employees were exercising their constitutional rights to join the membership of the Claimant Union. In the same fashion, they were exercising their constitutional right to leave the membership of the 1st Interested Party.
40. Therefore, notwithstanding the recognition agreement as well as the CBA between the Respondent and the 1st Interested Party, the employees of the Respondent were well within their constitutional rights under Articles 36 & 41(2) (c) of *the Constitution* and Section 4(1) of the *Labour Relations Act* to join the Claimant Union.
41. On this issue, I wish to reiterate the sentiments expressed by the Court (Rika J) in the case of *Amalgamated Union of Kenya Metal Workers vs Dock Workers Union & another* [2019] eKLR, thus:
- “ 12. It is therefore not a substantive point of law, for the 2nd Respondent, to posit that the 1st Respondent is not the relevant Trade Union to represent Employees in the motor trade group. Recent decisions from the Courts have tended to overlook industrial trade unionism, in favour of freedom of association. Realities on the ground have shown that the principle of ‘one industry, one trade union’ is no longer workable.”
42. With that being said, I now turn to the issue of remittance of trade union dues. As stated herein, the Claimant has sought to compel the Respondent to continue deducting trade union dues from its employees and to remit the same to the Claimant.
43. Payment of trade union dues is an obligation that goes hand in hand with an employee's right to join a trade union. In this regard, Section 48(2) and (3) of *Labour Relations Act* provides as follows: -
- (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.
44. To this end, once an employee is recruited to join a trade union and signs a check-off form to that effect, an employer is required to commence deduction and remittance of union dues for the recruited employee within 30 days of being served with the said check-off forms.
45. As stated herein, the Respondent has not denied receiving the check-off forms from the Claimant Union.
46. It is worth noting that Section 48(3) aforementioned is couched in mandatory terms, hence it is not up to the employer to elect whether to comply.
47. What's more, Section 48(2) and (3) of the [Labour Relations Act](#) resonate with Section 17(11) of the [Employment Act](#), which provides as follows:
- [17(11) No employer shall limit or attempt to limit the right of an employee to dispose of his wages in a manner which the employee deems fit, nor by a contract of service or otherwise seek to compel an employee to dispose of his wages or a portion thereof in a particular place or for a particular purpose in which the employer has a direct or indirect beneficial interest.
48. Related to this provision is Section 19(1)(f) and (g) of the [Employment Act](#), which obliges an employer to deduct from the employees' wages:
- “(f) any amount the deduction of which is authorised by any written law for the time being in force, collective agreement, wage determination, court order or arbitration award;
 - (g) any amount in which the employer has no direct or indirect beneficial interest, and which the employee has requested the employer in writing to deduct from his wages.”
49. It is apparent that trade union dues fall in the category of the deductions under Section 19(1) (f) and (g) above and the employee is at liberty to require the employer to make deductions from his wages and to remit the same as appropriate.
50. In the circumstances, the Respondent herein is mandated to effect deductions of trade union dues from the Claimant's members who are its employees and to remit the same to the Claimant's gazetted bank account.

Order

51. In the final analysis, the Court finds in favour of the Claimant to the extent that the Respondent is hereby directed to deduct and remit to the Claimant's gazetted bank account, trade union dues from



its employees who have duly signed check off forms and acknowledged membership to the Claimant's union.

52. There will be no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF MAY 2025.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant No appearance

For the Respondent Mr. Mwangi

For the 1st Interested Party No appearance

For the 2nd Interested party No appearance

Court assistant Millicent

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

