



**Kenya Union of Commercial and Food Allied Workers v Trans-Mattresses Limited  
Supermarket (Cause E020 of 2023) [2025] KEELRC 1598 (KLR) (22 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1598 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KITALE  
CAUSE E020 OF 2023  
MA ONYANGO, J  
MAY 22, 2025**

**BETWEEN**  
**KENYA UNION OF COMMERCIAL AND FOOD ALLIED  
WORKERS ..... CLAIMANT**  
**AND**  
**TRANS-MATTRESSES LIMITED SUPERMARKET ..... RESPONDENT**

**JUDGMENT**

1. The Claimant is a trade union registered under the *Labour Relations Act* and is mandated in its constitution under Rule No. 5 to represent employees in the commercial and food sector.
2. The Respondent is a limited liability company registered under the laws of Kenya operating a supermarket in Kitale.
3. By virtue of its constitution the employees of the Respondent fall within the purview of the Claimant's membership and it is the right union to represent the employees of the Respondent in labour matters.
4. The Claimant and Respondent have a valid recognition agreement and have negotiated a collective bargaining agreement (CBA) for the period 2017-2019 which is in force to date by virtue of Clause 27 thereof which provides that the agreement shall remain in force for the period of 24 months and thereafter continue in force until it is amended by mutual agreement between the parties.
5. It is the Claimant's averment that following the signing and registration of the CBA for the period 2017-2019 both its members and non-members employed by the Respondent have been enjoying better terms and conditions of employment arising therefrom.
6. The Claimant avers that on 10<sup>th</sup> March, 2022 it made a request to the Cabinet Secretary Ministry of Labour seeking an order requiring the Respondent to deduct agency fees from all its unionisable



employees. That on 26<sup>th</sup> May, 2022 the Cabinet Secretary, through Legal Notice No. 118, issued an order directing the Respondent to commence the deduction and remittance of agency fees.

7. The Claimant avers that it served the Legal Notice on the Respondent on 1<sup>st</sup> September, 2022 and requested the Respondent to implement the same. The Claimant avers that the Respondent failed to implement the same.
8. The Claimant avers that on 18<sup>th</sup> April, 2023 the Claimant wrote to the Respondent again requesting it to implement the Legal Notice but the Respondent refused to deduct and remit agency fee as directed in the Legal Notice.
9. It is the Claimant's averment that at the time of serving the Legal Notice upon the Respondent it had 138 unionisable employees who were non-members of the Claimant but benefitted from the CBA.
10. The Claimant avers that the Respondent was deducting and remitting union dues from its members in the Respondent's employment and that there is no justifiable reason why the Respondent should not deduct and remit agency fees from the non-members who were enjoying the benefits under the CBA.
11. The Claimant further avers that the Respondent has no justifiable reason as to why it has failed to deduct and remit agency fees after being served with the requisite notice.
12. In the instant suit the Claimant seeks the following reliefs from the court: -
  - i. Order the Respondent to commence deduction and remittance of agency fees from all unionisable employees who are non-members of the Claimant.
  - ii. Order the Respondent to pay the unremitted agency fees from their funds.
  - iii. The cost of the suit be provided for by the Respondent.
13. The suit was filed together with an application in which the Claimant sought the following orders:
  - i. That this application be certified urgent, service thereof be dispensed with the same be heard ex-parte in the first instance.
  - ii. That the Honourable Court do issue interim orders directing the Respondent to commence deduction and remittance of agency fees form all unionisable employees, who ar non-members of the Applicant pending hearing and determination of the Application.
  - iii. That the Honourable Court do issue interim orders directing the Respondent to comply with the Legal Notice No. 118 issued on 26<sup>th</sup> May 2022 by the Cabinet Secretary of Labour.
  - iv. That the Honorable Court do issue orders directing the Respondent to effect deduction and remittance of agency fees form all unionisable employees who are not members of the Claimant/Applicant.
  - v. That cost in the cause.
14. On 30<sup>th</sup> January 2024 the Respondent filed an application in which it sought the following orders:
  - i. Spent.
  - ii. That this Honourable Court be pleased to stay proceedings herein for the delivery of Judgment on 1<sup>st</sup> February 2024 and schedule this application for hearing and final determination of our application.



- iii. That an order do issue to confirm that the Applicant/Respondent no longer has any relationship and/or dealings with the Respondent/Claimant since none of the Applicant/Respondents employees/staffers or premises ceased to be members of the Respondent/Claimant Union.
- iv. The cost of this application be provided for.
15. In a ruling dated and delivered on 28<sup>th</sup> November, 2024 the court directed that issues in both applications be consolidated and be heard together with the Claim as the same could not be dealt with without delving into the issues in the Claim.
16. The Respondent did not file a defence to the Claim. It however filed a replying affidavit to the Claimant's application dated 18<sup>th</sup> July, 2023 and also filed a supporting affidavit with its application dated 30<sup>th</sup> January 2024 which in all respects contain its position and which I will treat as its defence. Both the affidavits are sworn by Lucy Nyaruai, the Respondent's Human Resource Manager.
17. In sum Ms. Lucy Nyaruai deposes that she is aware of the recognition agreement between the parties dated 26<sup>th</sup> April, 2017, and the collective bargaining agreement.
18. That the Claimant filed Cause No. ELRC E009 of 2023 against the Respondent which is pending before this court for review of the CBA.
19. The deponent further states that at the time of swearing the affidavit the Claimant did not have any members in the Respondent's organization as all the members had resigned.
20. She further deposed that the employees had formed a Welfare Association and entered into different and more preferable terms with the Respondent. That the employees consider their negotiated terms better than what is offered in the CBA by the Claimant.
21. It is further deposed that the Respondent had only 112 unionisable employees as at October, 2022 and October, 2023 and the Claimant's allegation that the Respondent had 138 unionisable employees is incorrect.
22. Ms. Nyaruai further deposed that the Respondent had issued a cheque for Kshs. 84,304 to cover agency fees for the years 2022 and 2023.
23. The suit was disposed of by way of written submissions which both parties filed and exchanged. The Claimant's submissions are dated 12<sup>th</sup> February, 2025 while the Respondent's submissions are dated 25<sup>th</sup> March, 2025. The Respondent also relies on its submissions dated 27<sup>th</sup> May, 2024 in respect of the applications referred to herein above.

### **Analysis and Determination.**

24. I have considered the pleadings and the submissions as well as authorities cited and relied upon by the parties. It is not in dispute that the parties have a recognition agreement. It is further not in dispute that the parties negotiated a CBA arising from which the Respondent applied to the Cabinet Secretary for Labour to issue an order for payment of agency fees according to section 49 of the Act, which was done through Legal Notice No. 118 of 26<sup>th</sup> May, 2022.
25. The issue arising for determination in the suit is whether or not the Respondent should continue paying agency fees.



26. Section 49 of the *Labour Relations Act* provides for agency fees as follows:

49. Deduction of agency fees from unionisable employees covered by collective agreements
- (1) A trade union that has concluded a collective agreement registered by the Industrial Court with an employer, group of employers or an employers' organisation, setting terms and conditions of service for all unionisable employees covered by the agreement may request the Minister to issue an order requiring any employer bound by the collective agreement to deduct an agency fee from the wages of each unionisable employee covered by the collective agreement who is not a member of the trade union.
  - (2) A request in accordance with sub-section (1) shall—
    - (a) be signed by the authorized representatives of the trade union and employer, group of employers or employers' organisation;
    - (b) supply a list of all employees prepared by the employer in respect of whom a deduction shall be made;
    - (c) specify the amount of the agency fee, which may not exceed the applicable trade union dues; and
    - (d) specify the trade union account into which the dues shall be paid.
  - (3) An employer in respect of whom the Minister has issued an order as specified in subsection (1) shall commence deducting agency fees from the employees named in the Minister's notice within thirty days of receiving the Minister's notice.
  - (4) The Minister may vary an order issued under this section on application by the trade union and the employer, group of employers or employers' organisation concerned.
  - (5) A member of trade union covered by a collective agreement contemplated by subsection (1) who resigns from the union, is immediately liable to have an agency fee deducted from his wages in accordance with this section.
  - (6) If a collective agreement is implemented retrospectively after registration by the Industrial Court, the agency fee shall be deducted and paid to the trade union for the period of retrospective implementation in accordance with this section.

27. The Claimant submitted that as provided in Legal Notice No. 118 the Respondent was supposed to commence deduction and remittance of agency fees on 30<sup>th</sup> September, 2022. That the Respondent in compliance commenced deduction of agency fees following service of the legal notice but for unknown reasons, stopped remittance of the same from October, 2023.

28. The Respondent on its part submitted that the Respondent's employees formed their own Welfare Association based on values that are different from the ones contained in the Claimant's CBA. That there is no value in burdening the employees with what it termed as a levy that does not and will not benefit them in any way. That if the court allows the Respondent to continue receiving agency



fees from employees of the Respondent it will amount to a situation in which the law compels an individual or group of individuals to continue supporting an entity they do not want to be part of or even draw benefit from. That the preamble to the *Labour Relations Act* speaks to democratization of trade unions and protection of freedom of association in the spirit of conducive social justice and economic development.

29. The respondent referred this court to the decision in *Kenya Union of Commercial Food & Allied Workers v Woolmart Limited* [2024] eKLR. I hasten to point out that the decision is not relevant to this case whose subject matter is agency fees and not negotiation of CBA which was the subject matter of the said suit.
30. Payment of agency fees, as provided in section 49 of *Labour Relations Act*, is payable by employees who are benefiting from terms and conditions of service in a CBA negotiated by a trade union, but are not members of the union.
31. The Respondent has stated that it has negotiated better terms of employment with the welfare association formed by the workers. No evidence has been adduced beyond the list filed by the Respondent to prove the existence of such welfare association.
32. Further, the fact that the Respondent agreed to negotiate with such welfare association when there is a trade union which it has recognized and would have referred the workers to means that the Respondent has been encouraging the resignations from the union membership to join the association which is both unconstitutional and a limitation of the rights of workers to join and participate in activities of a trade union as provided in the *Labour Relations Act* and decreed in Article 41 of *the Constitution*.
33. A workers' welfare association is not a trade union and cannot be promoted by an employer in order to encourage employees to leave membership of a trade union in favour of a workers' welfare association. Such an association would not, for example be in a position to represent employees where there is disagreement between an employee and the employer. A workers association can also not enforce terms and conditions of employment negotiated with an employer as such agreement lacks the force of law. There can be no comparison between an unregisters workers association and a trade union and one cannot take the place of the other even if such an association were to be registered.
34. On the issue that none of the Respondent's employees is a member of the Claimant union, the provisions of section 48 of the Act, which the Respondent has already invoked, is the proper channel for dissolution or termination of the recognition agreement which would then terminate any further relationship between the Respondent and the Claimant.
35. For the time being before the National Labour Board determines the petition by the Respondent, this court must respect the provisions of section 49 of the *Labour Relations Act* with regard to agency fees. The Respondent having negotiated a CBA with the Claimant which has not been amended as provided therein, is bound to deduct and remit to the union agency fees in respect all unionisable employees benefitting from the terms of the CBA who are not members of the union. An agreement signed with an unregistered welfare association of workers cannot take the place of or replace the terms of a CBA that has been registered by this court and which by virtue of section 59 of the Act becomes incorporated into the terms of service of employees who are subject thereto.
36. For the forgoing reasons, I find merit in the claim herein and make orders as follows:
  - i. The Respondent is ordered to commence and continue deducting and remitting agency fees from all unionisable employees who are non-members of the Claimant and benefitting from the terms of the Collective Bargaining Agreement negotiated by the Claimant and registered in this court.



- ii. The Respondent is directed to pay the unremitted agency fees to the Claimant.
37. The Respondent shall pay the Claimant's costs of this suit assessed at Kshs.50,000 being reasonable expenses associated with filing and prosecution of this suit.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON**

**THIS 22<sup>ND</sup> DAY OF MAY 2025**

**MAUREEN ONYANGO**

**JUDGE**

