



REPUBLIC OF KENYA



KENYA LAW
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**Kenya Engineering Workers Union v M/S Auto Craft Limited (Cause
20 of 2019) [2025] KEELRC 1364 (KLR) (9 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1364 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE 20 OF 2019
MA ONYANGO, J
MAY 9, 2025**

BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
M/S AUTO CRAFT LIMITED RESPONDENT

JUDGMENT

1. The Claimant is a trade union registered under The [Labour Relations Act](#) to represent employees in the engineering and allied sector.
2. The Respondent is a limited liability company. According to the Claimant, the Respondent's business falls within the purview of representation of the Claimant union as per her duly registered constitution and the Claimant therefore has jurisdiction to represent the employees of the Respondent in labour matters.
3. The Claim herein was filed by the Claimant vide a Memorandum of Claim dated 21st May 2019 wherein the following prayers are sought: -
 - i. That the Honourable Court deem fit to Order the Respondnet herein to comply with section 48 of the [Labour Relations Act](#) by way of deducting and remitting union dues monthly
 - ii. That the Honourable court be pleased to Order the Respondent to accord the Claimant Recognition Agreement by signing the same within specific time frame to pave way for CBA negotiations
 - iii. That the Respondent be ordered to pay 2% of the Claimant's members gross salaries from the month of April 2017 from her own pocket
 - iv. That the Honourable court to issue orders against the Respondent from victimizing the Claimant members on ground of trade union affiliation



- v. That any other relief the court may deem fit to grant.
4. The Claimant avers that in the month of January 2016 it recruited 10 out of 15 employees of the Respondent into its membership which translates to 67% of the total workforce of the Respondent's employees. The Respondent however declined to deduct and remit union dues despite receiving the original check off forms duly signed.
 5. According to the Claimant, in the month of June 2016, the Claimant forwarded the Model Recognition Agreement to the Respondent for perusal before having a joint meeting for signing the same but the Respondent declined even after many follow ups.
 6. The Claimant contends that it reported a dispute to the Ministry of Labour who accepted the dispute under reference No. MLSS/LD/IR/13/98/2016 and Ms. Maitsi of Eldoret Labour Office was appointed as Conciliator. The Claimant asserts that the conciliator invited parties for several conciliation meetings but the Respondent declined to co-operate by refusing to attend the meetings. As a result the Conciliator issued a Certificate of Unresolved Dispute paving way for the filing of the instant suit.
 7. In opposition to the Claim, the Respondent filed its Response dated 14th February 2020.
 8. The Respondent admitted that the Claimant recruited 10 out of 15 of its employees but stated that 6 of the employees withdrew their membership while 3 of them left employment leaving only one employee as a member of the Claimant.
 9. The Respondent denied violating section 48 of the Labour Relations Act and maintained that all the requirements for recognition had not been met by reason that: -
 - i. The Applicant has less of 51% of the Respondent's workforce
 - ii. The Applicant has not demonstrated that it is the most relevant union as per the registered constitution.
 10. The Respondent annexed supporting affidavits of 6 of its employees alleging that they had withdrawn their membership of the Claimant.
 11. On 14th February 2024, the court directed that the claim be disposed of by way of written submissions. From a perusal of the record, only the Claimant filed written submissions.
 12. In its submissions filed in court on 28th February 2024, the Claimant contended that the supporting affidavits filed in court by the Respondents' employees alleging that they had withdrawn their membership have no place in law.
 13. The Claimant submitted that it is entitled to the reliefs it sought in its Memorandum of Claim as it has demonstrated that it met all the requirements of the law having recruited 10 out of 15 of the Respondent's employees and had thus attained the 51% simple majority requirement. In addition, the Claimant submitted that there is no rival union claiming to represent the Respondent's employees and that the Claimant is the most relevant union for the sector.
 14. The Claimant submitted that the Respondent ought to pay the arrears of union dues from the month of July 2016 on the basis that the check off forms were served upon the Respondent in mid-June 2016. The Claimant assessed the amount due in unpaid union dues at Kshs. 231,012 plus costs of the suit.



Determination.

15. Upon consideration of the pleadings and the submissions on record, the only issue that presents itself for determination is whether the Claimant had attained the simple majority as per section 54 of the [Labour Relations Act](#) to qualify to be recognized by the Respondent.
16. Section 54(1) of the [Labour Relations Act](#) provides as follows:-

“An employer, including an employer in the public sector, shall recognize a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees.”
17. The Claimant asserted that it recruited 10 out of 15 employees of the Respondent translating to 67% membership. In support of this position, the Claimant annexed the check off forms signed by the recruited employees of the Respondent, and which check off forms were forwarded to the Respondent vide a forwarding letter dated 13th June 2016 also attached to the Claim.
18. On the other hand, the Respondent contended that the Claimant had not met the simple majority threshold for recognition as 6 of the 10 employees it recruited had withdrawn their membership from the Claimant while 3 had left employment leaving the Claimant with only one member. As mentioned earlier in this judgment, the Respondent filed affidavits of the 6 employees who had been recruited by the Claimant and whom the Respondent alleged had resigned. In those affidavits the employees allege that they had since withdrawn their membership from the Claimant.
19. Section 48 of the [Labour Relations Act](#) provides for resignation from union membership as follows: -
 - (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.
 - (4) The Minister may vary an order issued under this section on application by the trade union.
 - (5) An order issued under this section, including an order to vary, revoke or suspend an order, takes effect from the month following the month in which the notice is served on the employer.
 - (6) 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.
 - (7) A notice of resignation referred to in subsection (6) takes effect from the month following the month in which it is given.
 - (8) An employer shall forward a copy of any notice of resignation he receives to the trade union.
20. The Respondent did not tender any evidence that it had complied with the provisions of section 48 of the [Labour Relations Act](#). The issue of withdrawal of the Respondent’s employees from the Claimant union only came up after the Claimant filed the suit at hand.
21. Further, the Respondent did not exhibit any documentation in respect of the three employees whom it alleged to have resigned from employment through which this averment could be verified.
22. In the absence of concrete evidence of withdrawal of the 6 employees of the Respondent and resignation of the three employees, I find that the Claimant has proved that it was entitled to recognition at the time it sought the same.



23. Flowing from the above, I find that the Claimant recruited 10 out of 15 employees of the Respondent's employees and had thus satisfied the requirements under Section 54(1) of the *Labour Relations Act* to be recognized as the union to negotiate terms and conditions of service for all unionisable employees of the Respondent.
24. With regard the prayer for payment of the arrears by the Respondent from its pocket, I decline to grant the same as union dues are deducted from the employees' salaries and remitted to the union. It has also been a long time since the suit was filed and making such an order would create unwarranted hardship to the Respondent.
25. Consequently, judgment is entered in favor of the Claimant in the following terms: -
- i. The Respondent is directed to immediately commence deduction of union dues in respect of all employees who have signed the Claimant's check off forms (Form S) and remit the same to the union on a monthly basis in terms of Section 48 of the *Labour Relations Act*.
 - ii. The Respondent is directed to immediately sign the Recognition Agreement between it and the Claimant and to commence collective bargaining in terms of the Agreement with the Claimant.
 - iii. The Respondent is directed to desist from victimizing the Claimant's members or forcing them to withdraw their membership from the Claimant.
26. The Claimant's costs for this claim are assessed at Kshs. 50,000 and shall be borne by the Respondent, in view of the fact that the Claimant was represented by its official and is not capable of having the costs taxed under the Advocates Remuneration Order.

DATED, SIGNED AND DELIVERED VIRTUALLY ON

THIS 9TH DAY OF MAY 2025

MAUREEN ONYANGO

JUDGE

