



**Kenya National Private Security Workers Union v Ideal Security Ltd (Employment and Labour Relations Cause 601 of 2016) [2025] KEELRC 1377 (KLR) (9 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1377 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 601 OF 2016**

**JW KELI, J**

**MAY 9, 2025**

**BETWEEN**

**KENYA NATIONAL PRIVATE SECURITY WORKERS UNION ..... CLAIMANT**

**AND**

**IDEAL SECURITY LTD ..... RESPONDENT**

**JUDGMENT**

1. The claimant was a trade union registered within the Republic of Kenya to represent industrial interest of employees engaged and employed in the private security industry. The claimant filed memorandum claim dated the 12th day of April 2016 seeking for the following prayers;
  - a. That the Respondents do deduct and remit Union dues from the date the check off forms were signed by unionisable members in accordance with Section 48 of the *Labour Relations Act*.
  - b. That the Union dues deducted to be deposited in the Claimants Gazetted Account.
  - c. That the Respondent be ordered not to intimidate, victimize, harass and sack any worker involved in Union activity.
  - d. The Court do direct and order respondent to allow workers to be organized, engaged in union of their choice.
  - e. The Respondent do meet the costs of this cause.
2. In support of the claim was undated witness statement of Isaac G.M Andablwa the General Secretary of the claimant union.
3. The respondent entered appearance through the Lawfirm of Okongo Omogeni & Company advocates and filed on the 22<sup>nd</sup> August 2016 a replying affidavit of Yuda Imunya dated 13<sup>th</sup> August 2016 in opposition to the claim and annexed letter dated 1<sup>st</sup> August 2016 addressed to the union being a list of



staff who had resigned from its employment and several letters by its employees denying membership to the union. The respondent further filed on the same date response to the memorandum of claim dated 3<sup>rd</sup> August 2016. The respondent further filed on even date witness statements of Geoffrey Muthinja and Silas Mureithi.

### **Hearing and evidence**

4. The claimant's case was heard on the 7<sup>th</sup> October 2024 and on 5<sup>th</sup> November 2024 where the Claimant's Secretary, Isaac Andabwa, adopted as his evidence in chief his witness statement filed in court on the 13<sup>th</sup> April 2016 and produced the documents annexed to the Notice of Motion dated 12<sup>th</sup> April 2016 as the claimant's evidence. Isaac was cross-examine by counsel for the respondent, Mr. Ian Mbithi and re-examined by his counsel Ms. Wanyama.
5. The Respondent's case was heard on the 5<sup>th</sup> November 2024 where RW was Silas Mureithi who adopted as his witness statement dated 13<sup>th</sup> August 2016 as his evidence in chief and was cross-examined by counsel for the claimant Ms. Wanyama and re-examined by his counsel Mr. Mbithi.
6. The parties took directions on filing of written submissions on close of the respondent's case. Only the claimant filed.

### **Claimant's case in summary**

7. The Claimant herein is a duly registered Labour Organization under Section 19 of the [Labour Relations Act](#) 2007 and mandated to represent the industrial interest of employees engaged in private security industry. On diverse dates in the year 2016, the Claimants recruited employees of the Respondent into the Claimants membership by means of checkoffs within the meaning of the Mandatory provisions of Section 48 of the [Labour Relations Act](#). The checkoffs were served upon the Respondents a fact which the Respondents confirmed during trial. To date, the Respondents have dilly dallied, waived and out rightly avoided effecting and remitting union dues to the Claimants gazetted account. The Respondents instead, became extremely unfair to its employees and actually started harassing the members advising them to stop participating in the union activities. Efforts by the Claimants General Secretary to resolve this matter amicably failed forcing the Claimants to report a dispute at the Ministry of Labour level and later filing this matter in court.

### **Respondent's case in summary**

8. Contrary to the Claimant's allegations, the Respondent herein does not in any way have any issue with its employees forming, joining or participate in the activities and programmes of any Trade Union of their choice. That on or about the month of April 2016, the Claimant's agents approached the Respondent's employees while in the line of duty, masquerading as the Respondent's officials sent from head office to collect some information. On account of the foregoing, some of the Respondent's employees signed the Claimant's Check off lists though with no intention whatsoever of becoming the Claimant's members. That several employees have written letters to the Respondent warning against the said trade union deductions. Additionally, some of the persons listed in the aforesaid check off lists are no longer the Respondent's employees.
9. That some of the signatures indicated in the check off lists appear to have been forged for the sole purpose of deceiving this Honourable Court as the persons alleged to have made the signatures have denied ever making them. That in any event, the check off lists as presented before this court reveal that the notice envisaged by Section 48 (3) of the [Labour Relations Act](#) (Cap 223 of the Laws of Kenya) was never presented nor received by the Respondent herein. Further, the said notice is dated the 4<sup>th</sup> of April 2016, yet this suit was filed on the 12<sup>th</sup> of April 2016, barely a week later yet the Act provides



for a period of Thirty (30) Days notice. With the foregoing, the Respondent is thus convinced that the suit herein was merely instituted as a means to intimidate and harass the Respondent into submission and as such, the Court process is being used to do the Claimant's bidding.

10. The respondent sought an order to issue from this Honorable Court to the Claimant that any union dues deductions by the Respondent in regard to its employees shall only abide by a written authorization of the said employee confirming membership in the Claimant.

### **Determination**

11. The claimant in written submissions addressed the following issues:-
  - a. Whether the respondent herein is an eligible member of the claimant
  - b. Whether there is a case for victimization , intimidation and harassment of unionisable members.
  - c. Whether the respondent should pay the trade union dues not deducted from the claimant's members
  - d. Whether the claimant is entitled to the costs of the suit.
12. The respondent did not file any issues for determination but the court took into account the response as summarised above.
13. The court having heard the case of considered the opinion the issues for determination in the suit were :
  - i. Whether the respondent's unionisable employees are eligible members of the claimant.
  - ii. Whether there was a case for victimization, intimidation and harassment of unionisable members.
  - iii. Whether the claimant was entitled to reliefs sought.

### **Whether the respondent's unionisable employees are eligible members of the claimant.**

#### **Claimant's submissions**

14. The claimant submitted that Rule No. 3 (a) of the Claimant's Constitution provides as follows:-

"Ordinary membership Eligibility

- i) Except as indicated in paragraph (ii) below, the following are eligible for membership in the union.
- ii) Any person employed in any capacity and in any ordinary office or post in any private security service providers, private security firms, courier firms ran and managed by private security providers and firms as well as private security officers, private investigators security guards, warders, rangers, VIP guards, bouncers, cash escorts, cash management who is, or above 18 years."

That it was clear that the Respondents herein being a security firm is an eligible member of the Claimant as per the Claimants Constitution. This is a fact well known by the Respondents that was further proved by the claimants during hearing by production of checkoff forms signed by



Respondent's members. The *Employment Act* recognizes the right to association of unionisable members. Article 41(2) of *the Constitution* provides that:-

"every worker has the right to form, join or participate in the activities and programmes of a trade union ..."

### **Decision**

15. In the opinion of the court the eligibility of the Respondent's unionisable employees to be members of the claimant was not in dispute. The Respondent was a private security company. The court noted that there was a decision of the court in Industrial Cause No. 70 of 2002 cited by Justice Nduma in Industrial Court, Nairobi cause No. 106 of 2011, *Kenya Union of Commercial Food and Allied Workers v G4S Security Services Kenya Ltd* where it was ordered that private security personnel should be represented by the Claimant union. The issue is settled.

### **Whether there is a case for victimization, intimidation and harassment of unionisable members.**

#### **Claimant's submissions**

16. The issue of victimization because of Union membership is a grave matter which strikes at the heart of the constitutional right to freedom of association, right to organize and participate in the activities of a union. An employer has no right to verify, interrogate and confirm from its employees about union activities and the right union. An inquiry and or investigation of whether the employees has joined a trade union is offensive and creates a bad working environment and can only amount to constitutional damage. It was the Claimant's submission that the Respondents employees joined the Claimants union willingly. The Respondents ought not to involve themselves in Union activities by inquiring how they joined. The action of the employer engaging themselves in union activities including verification and confirmation results to intimidation, victimization and harassment. The Respondent ought to upon receipt of the checkoff, proceed to deduct and remit the dues to the Claimants gazetted account without further inquiries or involvement.
17. The claimant relied on the provision of Section 46(c,d,e and f) of the *Labour Relations Act* which provides that participation in union activities does not constitute a ground for dismissal or imposition of a disciplinary action which was the case in this matter. The claimant submitted that various employees approached its offices raising concerns for receiving oral threats and as a result the Claimants did not have any evidence to produce before this Honourable Court. Section 46 (c, d, e and f) state as follows: "
  - (c) an employee's membership or proposed membership of a trade union;
  - (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;
  - (e) an employee's seeking of office as, or acting or having acted in the capacity of, an officer of a trade union or a workers' representative;
  - (f) an employee's refusal or proposed refusal to join or withdrawal from a trade union;"



18. The ILO's Committee of Experts on Freedom of Association in its Digest of Decisions and Principles of Freedom of Association Committee Fifth (revised) edition, Comment No. 320 had this to say in relation to trade union unity and pluralism:-

"while it is generally to the advantage of workers and employers to avoid the proliferation of competing organization, a monopoly situation imposed by law is at variance with the principle of free choice of workers and employers' organizations". Under comment 315, the Committee had this to say:-

"The right of workers to establish organizations of their own choosing implies in particular, the effective possibility to create - if the workers so choose - more than one workers' organization per enterprise"

19. It was the Claimants testimony that employee's signatures were forged by the respondents in order to deceive the claimant they had resigned from the Claimants Union. From the face of most of the letters, the authors did not clearly communicate the intention. Some letters had been addressed to different parties other than the Claimant. Most of the letters had not been signed by the authors indicated on the face confirming the allegation on forgery. Furthermore, when the Respondent received the alleged resignation letters, he did not serve them to the Claimant to inform him of the new developments. Instead, the Respondents decided to keep quite a good reason to believe they were forgeries. The Claimants are aware of Section 48(6) of the Labour Relations Act 2007 which provides that:-

"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".

It was the Claimants submissions that despite acknowledging service of the Check offs, the Respondent reluctantly failed to deduct and remit union dues from the remaining number of employees who had already subscribed as members. This is a clear indication that indeed the Respondent willingly refused to deduct and remit union dues to punish the Claimants. The claimant further confirmed to this honourable court that all along the Respondents have been uncooperative and not willing to engage the Claimants in coming up with a recognition agreement and or discussing the affairs of the workers to improve the harmony in the sector. The rights of labour are captured succinctly in Article 41 of the Constitution of Kenya which states as follows:-

"41.

- (1) every person has the right to fair labour practices.
- (2) every worker has the right-
  - (a) to fair remuneration;
  - (b) to reasonable working conditions;
  - (c) to form, join or participate in the activities and programmes of a trade union; and
  - (d) to go on strike.
- (3) every employer has the right-
- (3) every employer has the right-
  - (e) to form and join an employers' organization; and



- (f) to participate in the activities and programmes of an employer's organization." Unionisable employees enjoy unfettered rights to join a union of their choice according to the constitution. Article 48 of the labour relations act provide; -
- "(i) in this part "trade union dues" means a regular subscription required to be paid a trade union as a condition of membership.
- (ii) a trade union may, in the prescribed form request the minister prescribed to issue an order directing an employer of more than five members belonging to the union to: -
- (iii)
- (a) deduct trade unions dues from wage of its members and
- (b) pay monies do deduct into a specified account of a trade union."

20. Deduction of union dues purely depends on the authority to deduct from members having signed the checkoff forms also known as Form S. In this case, the claimant produced in court duly signed check off forms signed by the claimants' members. There is absolutely no legal reason as to why the respondent would refuse to deduct and remit the union dues as per the signed check-offs forms That every person is protected by the constitution of Kenya in matters regarding to freedom of association. Article 36(1) of the Constitution of Kenya state that; -

"36. Freedom of Association (1) every person has the right to freedom of association, which includes the right to from, join or participate in the activities of as association of any kind."

Article 41 (c) further gives every worker the right to form, join or participate in the activities and programmes of a trade union while Article 41 (4) (5) states that;

- (4) every trade union and every employers' organization has the right-
- (a) to determine its own administration, programmes and activities;
- (b) to organize; and
- (c) to form and join a federation.
- (5) every trade union, employers' organization and employer has the right to engage in collective bargaining. The legal threshold for an employer to deduct union dues form employee's salary is set out under section 48 of the labour relations act which states that;
- (1) in this part "trade union dues" means a regular subscription required to be paid to a trade union by a member of the trade union as a condition of membership.
- (2) A trade union may, in the prescribed from, request the minister to issue a order directing an employer or more that 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. (2) 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." The claimant in this matter adduced sufficient evidence of the authority to deduct union dues from the salaries of the members which under section 49 of the Act should be check-off forms. The claimant further annexed all the check off forms served upon the Respondents and the decision to refuse deducting and remitting union dues is uncalled for. Deduction and remittance of union dues is based on the checkoffs forms and the orders by the labour cabinet secretary under Section 48 (5) of the act. The amount deductible is set out by the Gazette Notice from the Ministry of Labour which also gazettes the bank and account into which the deductions should be sent. This is provided for in Section 48 as read with Section 54 of the *Labour Relations Act* which states: -

"3. Recognition of trade union by employer

- (1) 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.
- (2) a group of employers, or an employers' organization, including an organization of employers in the public sector, shall recognize a trade union for the purposes of collective bargaining if the trade union represents a simple majority of unionisable employees employed by the group of employers for the employers who are members of the employers' organization within a sector.
- (3) an employer, a group of employers or an employers' organization referred to in subsection (2) and a trade union shall conclude a written Recognition Agreement recording the terms upon which the employer or employer's organization recognizes a trade union.
- (4) the minister may, after consultation with the board, publish a model recognition agreement.
- (5) an employer, group of employers or employers' association may apply to the board to terminate or revoke a recognition agreement.
- (6) if there is a dispute as to the right of a trade union to be recognized for the purposes of collective bargaining in accordance with this section or the cancellation of recognition agreement, the trade union may refer



the dispute for conciliation in accordance with the provisions of part VIII.

- (7) If the dispute referred to in subsection (6) is not settled during conciliation, the trade union may refer the matter to the industrial court under a certificate of urgency.
- (8) when determining a dispute under this section, the industrial court shall take into account the sector in which the employer operates and the model recognition agreement published by the minister.

21. In the case of Kudheha Workers Union versus Aga Khan University Hospital (2015) e KLR the Honorable Judge while interpreting section 48(2) and (3) stated that:

"From the above provision, it emerges that deduction and remittance of the union dues is part and parcel of the obligation of the respondent following the exercise by the claimant's members of a right to join a union. In this case the claimants, members chose to join the union and did sign forms authorizing the respondents to deduct union dues and remit them. The refusal by the respondents to deduct and remit these dues is an interference by the respondent of the employees' right to join and participate in the activities of a trade union... it is therefore this court's finding that the respondents' failure to deduct and remit union dues of the employees who joined the union infringed on their right under article 41 of *the constitution* and I order that the respondent do forthwith deduct and remit union dues for employees who have so authorized and not later than 30 days from the date of this judgment"

22. The Respondent did not file written submissions but the court considered its response.

### Decision

23. The defence of the respondent was that contrary to the Claimant's allegations, the Respondent herein does not in any way have any issue with its employees forming, joining or participating in the activities and programmes of any Trade Union of their choice. That on or about the month of April 2016, the Claimant's agents approached the Respondent's employees while in the line of duty, masquerading as the Respondent's officials sent from head office to collect some information. On account of the foregoing, some of the Respondent's employees signed the Claimant's Check off lists though with no intention whatsoever of becoming the Claimant's members. That several have written letters to the Respondent warning against the said trade union deductions. The Respondent stated that some of the persons listed in the aforesaid check off lists are no longer the Respondent's employees.
24. It was further the respondent's case that some of the signatures indicated in the check off lists appeared to have been forged for the sole purpose of deceiving this honourable Court as the persons alleged to have made the signatures have denied ever making them. That in any event, the check off lists as presented before this court reveal that the notice envisaged by Section 48 (3) of the *Labour Relations Act* (Cap 223 of the Laws of Kenya) was never presented nor received by the Respondent herein. Further, the said notice is dated the 4th of April 2016, yet this suit was filed on the 12th of April 2016, barely a week later yet the Act provides for a period of Thirty (30) Days notice.
25. During the hearing the claimant's witness told the court that the employees of the Respondent signed check-off forms as their wish to join the union as per section 48 of the *Employment Act*. That the unions use the check off forms to recruit members which the employer is obliged to effect.



26. The respondent RW told the court the check off forms had some names of persons not in their employment. RW admitted they were served with the forms. RW had no evidence in court to show the names of the persons in the forms were not their employees. RW informed the court he was in court to state their employees' signatures were forged but he had not reported as a criminal case. He had no evidence of the members he alleged to have resigned from the union. He told the court they served the letters of members who resigned on the union but he had no evidence. During re-examination RW told the court that the checkoff list did not have titles of the employees and did not state they were employees of the respondent. That for money to be deducted they had to verify with the employee, save for statutory deductions. There was no evidence of deduction not remitted.
27. The claimant's evidence vide G-M1 ( signed check-off forms) was uncontroverted evidence of the recruitment of employees of the respondent as members of the union. Section 19(1)(f)(g) of the Employment Act authorizes deduction of wages as follows:-“ 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;
- 28.
- (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;”
29. On deduction of union dues, Section 48(3) of the Labour Relations Act requires an employer in respect of whom the Minister(Read Cabinet Secretary ) has issued an order for deduction of wages to commence deducting the trade union dues 30 days of the trade union serving notice in FORM S (check off)signed by the employees in respect of which the employer is required to make deductions. The court found the claimant complied with the provisions of section 48 of the Act and produced the signed check-off forms in compliance.
30. The respondent on receipt of the forms had no other role other than to make deductions as instructed and as per section 48 (3)of the Labour Relations Act . The court found the position of RW that the forms did not disclose the positions held by employees or that some were not its employees an afterthought response taking into account the case summary summarised from his witness statement and the replying affidavit.
31. The forms were dated 4<sup>th</sup> April 2016 and the suit dated 12<sup>th</sup> April 2016 and filed 13<sup>th</sup> April 2016. The court found the claim for unremitted deductions was premature, taking into account 30 days had not lapsed since the submissions of the check off forms as stated under section 48 (3) of the Labour Relations Act to wit -
- “(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.”
- The unions activities are regulated by the Labour Relations Act and they must comply with the law to the letter. This was not the case here hence the case was prematurely filed in court. The deductions were due nevertheless as the claimant had complied with submission of Form S (Check off forms).



**Was there is a case for victimization, intimidation and harassment of unionisable members.**

32. The respondent filed in court various letters by its employees alleging that they were changing their minds on joining the union. The letters were dated between 20<sup>th</sup> and 27<sup>th</sup> July 2016 and others had no dates. There was no notification to the union of the said staff having resigned from the union. A letter dated 1<sup>st</sup> August 2016 addressed to the Union notified a list of staff who had resigned from the employer. The court read mischief due to the fact that the letters of resignation from the union were written a few days to the filing of the response. Nevertheless the suspicions of the court did not meet the threshold of balance of probabilities to conclude victimization, intimidation or harassment. The union did not place in court any such evidence and in any case they filed their case prematurely.

**Whether the Respondent should pay the trade union dues not deducted from the claimant's members.**

33. It was the claimant's submissions that the respondent should pay the union dues not deducted from the employees from day one, since it is the claimant's statutory right and for purposes of industrial peace and harmony. That it was the Respondent's duty to deduct and remit union dues once served with check-off duly signed by the members. Failure to do that shifts the burden back to them as it is a failure on their part. The employees should not be subjected to huge deductions accumulated as a result of the respondent's ignorance of the law.
34. The court already held the case was filed prematurely and there was no case against the employer as at when the case was filed 30 days having not lapsed. The court can only pick from the present. The court returns on the issue negative.

**Whether the claimant was entitled to the reliefs sought**

35. The claimant sought the following reliefs:-
- a. That the Respondents do deduct and remit Union dues from the date the check off forms were signed by unionisable members in accordance with Section 48 of the [Labour Relations Act](#).
  - b. That the Union dues deducted to be deposited in the Claimants Gazetted Account.
  - c. That the Respondent be ordered not to intimidate, victimize, harass and sack any worker involved in Union activity.
  - d. The Court do direct and order respondent to allow workers to be organized, engaged in union of their choice.
  - e. The Respondent do meet the costs of this cause.
36. The court having found the claimant had complied with the provisions of section 48 of the [Labour Relations Act](#) having submitted check off form "S" which the respondent acknowledged receipt, 30 days having long since lapsed, the claimant being the legitimate union in the private security industry, recognising the right of employees to unionise and enjoy right to fair labour rights under Article 41 of [the Constitution](#) and the right of the claimant to receive the deductions from its members under the law for purposes of organisation of its activities, the need to have the union recognised by the employer on meeting threshold for recognition and eventual negotiation of the collective bargaining agreement, the claim is partially merited.
37. That Respondent should deduct and remit Union dues from the employees in service who signed the check off forms as unionisable members in accordance with Section 48 of the [Labour Relations](#)



Act subject to compliance with the provisions of section 48 (-6-8) to wit :- '(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.”  
The foregoing is the only basis of non- deduction of dues on receipt of the check off and Form S and the check off by the employer as prescribed under the Act.

### **Conclusion**

38. In conclusion, the court having noted acknowledgement of receipt of the Check off Forms by the Respondent, the court orders that the Respondent do deduct and remit union dues from unionisable employees in service who signed the check off forms from salary of month of May and remit the dues subject to the provisions of section 48(6) of the Labour Relations Act and deposit the monies in the Claimant's Gazetted Bank Account within 30 days of this Judgment. The Respondent to continue making union deductions and remittance thereafter and for any other recruited members. The respondent to notify the union formally on receipt of resignation of any member from the union.
39. The claim having been filed prematurely, before lapse of 30 days of submission of check off forms the court orders each party to bear own costs in the suit.
40. It is so Ordered.

**DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 9<sup>TH</sup> DAY OF MAY , 2025.**

**J.W. KELI,**

**JUDGE.**

In the presence of:

Court Assistant: Otieno

Claimant : - Ms. Ndunge Wanyama

Respondent: Absent

Judgment in Nai ERLC Cause No. 601 of 2016 Page 7 | 7

