



Banking Insurance & Finance Union v Elimu Sacco Society Ltd (Cause E054 of 2024) [2025] KEELRC 1302 (KLR) (8 May 2025) (Ruling)

Neutral citation: [2025] KEELRC 1302 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E054 OF 2024**

S RADIDO, J

MAY 8, 2025

BETWEEN

BANKING INSURANCE & FINANCE UNION CLAIMANT

AND

ELIMU SACCO SOCIETY LTD RESPONDENT

RULING

1. The Banking Insurance & Finance Union (the Union) sued Elimu Sacco Society Ltd (the Respondent) on 22 January 2024, and it stated the Issue in Dispute as:
Refusal/failure by the Respondent Sacco to deduct and remit Union dues to the Claimant Union.
2. The prayers pleaded by the Union were:
 - i. A declaration from the Honourable Court that the Claimant is entitled to union dues in respect of the Thirteen (13) unionisable employees who have been recruited to the Union.
 - ii. There be an order from the Honourable Court directing the Respondent to deduct union dues from the salaries of the Thirteen (13) employees who have enrolled into membership of the Union and remit the same to the Claimant Union within seven days (7) of the judgment hereof.
 - iii. An order from the Honourable Court directing the Respondent to, within ten days (10) of the judgment hereof, to effect payments by crossed cheque into the Claimant's union account No. 01-020-741448-00 at Standard Chartered Bank Ltd Harambee Avenue Branch in accordance with Gazette Notice No 516 of 13th January 2009.
 - iv. Costs of this claim.
 - v. Any other relief the Honourable Court deems just to grant.



3. Since the filing of the instant Motion, the Union has filed 4 other Motions (dated 13 May 2024, 22 May 2024, 5 August 2024 and 17 October 2024) and none of them has been heard or determined.
4. On 19 June 2024, the Court (differently constituted) directed that the first two Motions be canvassed on the record and submissions to be filed and exchanged ahead of further directions on 7 October 2024).
5. During the session, the Union informed the Court that the Respondent had paid outstanding union dues, save for two members.
6. The Union filed submissions on 14 August 2024, and the Respondent on 4 September 2024.
7. When the parties appeared before this Court on 10 March 2025, the Court directed that it would address the first 3 Motions.

Motion dated 19 January 2024

8. In this Motion, the Union sought the following orders:
 - i. ...
 - ii. That there be an order directing the Respondent to immediately or within 7 days of an order herein, to deduct and remit union dues in respect of Thirteen (13) unionisable employees of the Respondent who have signed the check off forms (Form S).
 - iii. That there be an order directing the Respondent to within Ten (10) days of an order herein to effect payments of the union dues so deducted by crossed cheque into the applicant/ Claimant's union account No 01-020-741448-00 at Standard Chartered Bank Ltd Harambee Avenue Branch in accordance with Gazette Notice No. 516 of 13th January 2009.
 - iv. That costs of this application be in the cause.
9. The grounds in support of the Motion were that the Union and Respondent had a recognition agreement; that the Union had submitted Form Ss with 13 names of employees who had joined it on 6 November 2023, 27 November 2023 and 11 January 2024, but the Respondent had failed to commence deduction of union dues and that the Cabinet Secretary, Labour had issued the requisite Gazette Notice.
10. The Court gave directions on the Motion on 13 February 2024, and these included the filing and exchange of submissions within set timelines.
11. On 9 April 2024, the Respondent proposed that the Motion be compromised through out-of-court negotiations. There was no settlement.
12. The Respondent appears not to have responded to this Motion.
13. However, the Respondent stated in its submissions that it had commenced the deduction of union dues, save for two employees, one in management and another whose contract had lapsed.
14. With the state of the record, it is apparent to the Court that this Motion was overtaken by events.

Motion dated 13 May 2024

15. On 13 May 2024, the Union filed a Motion seeking orders:
 - i. spent
 - ii. spent



- iii. spent
 - iv. That the Honourable Court do declare that the grievant Duncan Ochola Andiego be deemed as a regular employee in accordance with section 37 of the [Employment Act](#).
 - v. That in the alternative, the declaratory order to issue that the Respondent unlawfully and wrongfully terminated the grievant Duncan Ochola Andiego from employment and therefore be compensated thereof.
 - vi. That the costs of this application be provided for.
16. The Respondent filed a replying affidavit opposing the Motion on 15 May 2024, asserting that it was bad in law, unsustainable and untenable. It was further deponed in the affidavit that the contract of the grievant had lapsed and had not been terminated.
 17. On its face, this Motion was incompetent because the Union did not plead in the Memorandum of Claim an action for unfair termination of employment of one Duncan Ochola Andiego or seek a prayer of reinstatement.
 18. The orders sought in the Motion were in vacuo, and the Motion is for dismissal.

Motion dated 22 May 2024

19. The third Motion by the Union sought orders:
 - i. spent
 - ii. spent
 - iii. spent
 - iv. That the Honourable Court do declare that the grievants, Sarah Nafula Wanjala and Rael Wabwire, be deemed as regular employee in accordance with section 37 of the [Employment Act](#), 2007.
 - v. That in the alternative, the declaratory order to issue that the Respondent unlawfully and wrongfully intend (sic) terminated the Grievants Sarah Nafula Wanjala and Rael Wabwire from employment and therefore be restrained accordingly thereof.
 - vi. That the costs of this application be provided for.
20. The Respondent filed a replying affidavit in opposition to the Motion on 7 June 2024.
21. Among the documents produced by the Union in support of the Motion were letters dated 13 May 2024 and 14 May 2024 informing Sarah Nafula Wanjala and Rael Wabwire respectively, that their fixed-term contracts would not be renewed upon expiry.
22. On the basis of the Union's supporting documentation, it is clear that the Grievants' contracts lapsed. Whether the failure to renew the contracts amounted to unfair termination of employment cannot be determined at this interlocutory stage.
23. The Court also notes that the alleged termination of the 2 contracts was not pleaded in the Memorandum of Claim and, therefore, the Motion is incompetent to that extent.



24. It is also noteworthy that the Memorandum of Claim had not been amended by the time the Motion was filed to reflect the changed status (an application to amend the Memorandum of Claim was filed on 17 October 2024, long after the Motion and submissions had been lodged with the Court).
25. This Motion is also for dismissal.
26. Before concluding, the Court observes that the Court issued a stay order on 6 June 2024. It is not clear from the record whether the stay order was based on the first or second motion, but it is probable, it was the second Motion.

Orders

27. Flowing from the above, the Motions dated 19 January 2024, 13 May 2024 and 22 May 2024 are dismissed.
28. The Respondent is awarded costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 8TH DAY OF MAY 2025.

RADIDO STEPHEN, MCIARB

JUDGE

appearances

For Claimant Mr Odera, Deputy Secretary-General

For Respondent Ms Obiayo, Federation of Kenya Employers

Court Assistant Wangu

