



**Kenya Union of Journalists v Standard Group PLC; Central Organization of Trade Unions (COTU) (Interested Party) (Employment and Labour Relations Cause E372 of 2020) [2025] KEELRC 1300 (KLR) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1300 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E372 OF 2020**

**HS WASILWA, J**

**MAY 8, 2025**

**BETWEEN**

**KENYA UNION OF JOURNALISTS ..... CLAIMANT**

**AND**

**THE STANDARD GROUP PLC ..... RESPONDENT**

**AND**

**CENTRAL ORGANIZATION OF TRADE UNIONS (COTU) .... INTERESTED PARTY**

**JUDGMENT**

1. The Claimant instituted this claim vide a Statement of Claim dated 30th June 2020 on grounds that the Respondent unilaterally terminated the membership of some of the Claimant's unionisable members. It prays for judgment against the Respondent for these orders: -
  - a. A declaration that that the purported termination/withdrawal of the affected members listed in Appendix 1 of the Respondent's letter dated 27th April 2020 membership to the Claimant Union was unlawful and un-procedural and therefore null and void.
  - b. A declaration that the alteration of affected members terms of service, including reduction of their annual leave days from 41 to 30 was unlawful and as such null and void.
  - c. A declaration that the Respondents cessation to deduct and remit union dues to the Claimant without the consent of the affected members was unlawful.
  - d. An order directing the Respondent to remit all the arrears in trade dues from the affected members.



- e. Costs of this suit.
- f. Interests in (d) and (e) above as per court rates.
- g. Any other orders as this Court deems fit and just.

### **Claimant's Case**

2. It is the Claimant's case it entered into a Recognition Agreement dated 18<sup>th</sup> February 1972 with the Respondent; pursuant to the Agreement, numerous collective bargaining agreements (CBA) have been executed, the recent one being the CBA 2018-2020 submitted for registration on 4<sup>th</sup> November 2019.
3. The Claimant avers that based on the Recognition Agreement, CBA and the law, the Respondent is under a strict duty to consult with the Claimant union on matters touching on the terms, conditions and welfare of its unionisable employees.
4. It is the Claimant's case that vide letters dated 25<sup>th</sup> March 2019, the Respondent unilaterally terminate the membership of some of its unionisable members. In response to these letters, the Claimant union vide a letter dated 28<sup>th</sup> March 2019 protested the Respondent's action as it was not based on the Recognition Agreement or the law prompting the Respondent to shelve the matter until April 2020 when the Claimant filed ELRC Case No. 171 of 2020.
5. The Claimant avers that the vide the Respondent's letters of 25<sup>th</sup> March 2019 and 27<sup>th</sup> April 2020 indicated it was proceeding to cease recognizing the members including Bureau Chief/ Senior Reporter, Business Editor, Associate Editor, Revise Editor, Chief Sub-Editor, Editor and Radio producer. It is the Claimant's case that the Respondent's action aims to unilaterally expand the categories of non-unionisable employees with consulting the union in violation of the Recognition Agreement and CBA.
6. The Claimant avers that Respondent further sent notifications to the affected employees that the terms of employment for management staff would henceforth be applicable to them. Additionally, without any lawful instruction from the Claimant union or the affected members, the Respondent stopped deducting and remitting the trade union dues from affected members.
7. The Claimant states that the Respondent proceeded to alter the affected employees' terms of service reducing their annual leave days from 41 to 30 days beginning of June 2020 to their detriment.
8. It is the Claimant Union's case that under the Recognition Agreement, only 4 positions are unionisable that is Editor-in-Chief, Managing Editor, Chief Reporter and Chief Sub-Editor or their equivalent alternatives. Therefore, without amendment of the Recognition Agreement, the Respondent cannot unilaterally purport to alienate some of union's members or expand the categories of non-unionisable employees.
9. The Claimant Union contends that the Respondent's violated the terms of the Recognition Agreement, CBA and provisions of Sections 48(6) and (7) of the [Labour Relations Act](#) that binds the employer to the terms of the Agreement as well as section 10(5) of the [Employment Act](#).

### **Respondent's Case**

10. In opposition, the Respondent filed a Statement of Response dated 29<sup>th</sup> November 2023.
11. The Respondent avers that the employees holding supervisory positions were excluded from union representation as provided under the Industrial Relations Charter of 1984 which prohibits certain



categories of staff who oversee operations in an area, have authority to appraise; and are engaged in policy formulation, administration and implementation from being members of the union.

12. It is the Respondent's case that four job classifications (Editor/Editor-in-Chief; Deputy Editor/ Main Editor; News Editor/Chief Reporter; and Chief Sub-Editor) was not the full list of supervisory positions to be excluded from Union representation.
13. The Respondent states that it has the prerogative to promote its employees and when its employees accepted their promotions, they also accepted their new management roles. By accepting these roles, the employees understand that managerial and supervisory roles are not unionisable.
14. It is the Respondent's case that there is no violation of the Recognition Agreement and CBA as their letter dated 27<sup>th</sup> April 2020 was meant to notify the employees in management and/or supervisory positions of the change as a result of their current supervisory roles in the terms and conditions of their employment.
15. It is the Respondent's case that by accepting the promotions in managerial and supervisory positions and terms of their employment contract, it is a direct consequence that they cease to be unionisable members.

### **Evidence in Court**

16. The Claimant's witness Eric Oduor (CW1) testified that he is the Secretary General of the Claimant Union and adopted his witness statement dated 30<sup>th</sup> June 2020 as his evidence in chief and produced the Union's bundle of documents dated 30<sup>th</sup> June 2020 as his exhibits.
17. During cross examination, CW1 testified that the CBA of 2016-2018 provided that unionisable employees could cease to be members of the union if promoted upwards.
18. CW1 testified that the Respondent company varied the membership but the members from the union did not perform supervisory roles.
19. CW1 testified that the job classification under clause 26 are the ones recognised in the Recognition Agreement as per the CBA, they are not unionisable members.
20. CW1 testified that they were coerced to withdraw from the union and there are letters from the Respondent Company for them to leave the union.
21. The Respondent's witness, Sharon Tomeyan (RW1), testified that she has worked as a HR practitioner at the Respondent company for 8 years. She produced her witness statement and documents therein dated 13<sup>th</sup> October 2024 as her evidence in chief and exhibits.
22. RW1 testified that the listed union members hold supervisory roles as they are in management and have a disciplinary role too.
23. During cross-examination, RW1 testified that Clause 26 only provides for job classification and description and there was no amendment to the Recognition Agreement.
24. It was RW1's testimony that none of the employees requested to withdraw from the union rather the Respondent company wrote to them to withdraw. The Respondent's letter did not attach any job description.
25. RW1 testified that Anne Njogu requested to withdraw from the union as she is a radio journalist hence no eligible to be a member. However, she chose to withdraw due to personal reasons and not due to holding a supervisory role.



26. RW1 testified that the Respondent did not write to the union concerning the withdrawal of its employees from the union.

### **Claimant's Submissions**

27. The Claimant union submitted on two issues: whether the targeted employees were exempted from the right to union membership and whether the withdrawal of the targeted employees from union was in compliance with the law.
28. On the first issue, the Claimant submitted that under Article 41 of *the Constitution* read together with Section 4 and 5 of the *Labour Relations Act*, every employee has a right to union membership and representation. This was further cemented in ILO declaration of fundamental principles and rights at workplace among which include 'freedom of association and the effective recognition of the right to collective bargaining'. The Right to Organize and Collective Bargaining Convention, 1949 provides under Article 1 that: -
- “Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.”
29. Against this background, it is the Claimant union's submission that this pursuant to this right, once such an employee is a member of a union, except as otherwise excluded by law, or contract he or she is entitled to not only continuity of their membership to the union but also to all benefits of being in a union. Hence, the purported withdrawal of employees from union membership by the Respondent amounted to undue interference with the employees' freedom of association in contravention of Articles 36 and 41 of *the Constitution*, sections 4 and 5 of the *Labour Relations Act* and Kenya's international obligations under the ILO.
30. It is the Claimant's union submission that the Respondent's justification for withdrawing the employees from the union was anchored on the Industrial Relations Charter, 1984 which prohibits staff who oversee operations in an area; have authority to appraise; and are engaged in policy formulation, administration and implementation from being members of the union. The Claimant submits that the charter is neither law nor anchored on any provision of the law, further it is preceded by the current *Employment Act*, the *Labour Relations Act* and *the Constitution* of Kenya. Therefore, the terms of the Industrial Relations Charters cannot override the express provisions of the Collective Bargaining Agreement 2014- 2016 and 2016- 2018.
31. The Claimant submitted that the Respondent neither furnished the union nor the affected employees job descriptions to indicate how the employees occupied the said management positions. As provided under Section 11(b) of the *Labour Relations Act*, it is the burden is on the party who is alleged to have engaged in that conduct to prove that their conduct did not infringe any provisions relating to freedom of association. The Respondent failed to present this court its organizational structure or detailed job description of the affected employees detailing the extent to which they are management staff.
32. The Claimant submitted that the withdrawal of the employees from the Union could only have been valid if due process as laid out in Section 48 of the *Labour Relations Act* was followed. Further, in the case of Kenya Tertiary and Schools Workers Union (KETASWU) v HELTZ Institute of Advanced Driving [2020] Eklr, the Court held that resignations from the Union have to be voluntary and must not be crafted only to defeat a lawsuit. In the instant suit, the withdrawals were initiated unilaterally by the Respondent, who identified the employees to target and without any valid reason proceeded to alter their terms of employment hence the same were null and void.



## Respondent's Submissions

33. The Respondent submitted on four issues whether: - the declaration by the Respondent terminating the membership to the union was unlawful and therefore should be declared null and void; the alteration of the affected members terms of service was improper and therefore null and void; the cessation to deduct and remit union dues to the Claimant without the consent of the members was unlawful and the claimant is entitled to the reliefs prayed for.
34. It is the Respondent's submission that clause 19 of the CBA of 2016-2018 provides for promotion however it does not state what happens when a promotion has been granted and the employee has joined a supervisory role. It relied on Court of Appeal case of Kenya Chemical and Allied Workers' Union v Bamburi Cement Limited [2017] eKLR which upheld the decision of the trial court and gave the trial court's reasoning on the transition of employees into non-unionisable employees as follows: -
- “The employees were quite happy for the many years they served in salaried category of employment and obviously enjoyed the benefits and perquisites that came with the elevated office. We have seen that *the Constitution*, the *Labour Relations Act* and the Charter grant freedom to an employee to join a union of his choice and leave it at will. The Charter has identified those in the management, who by reasons of conflict of interest cannot be members of the union. The union represents the interests of workers in negotiating and articulating issues that affect them with the management. That can only effectively be done in the absence of any conflict of interest.
- Since in Kenya, employment is governed by the general Principles of the law of contract, as now contained in and modified by various statutes, it must follow that employment is essentially an individual relationship negotiated by the employee and the employer in accordance with their respective needs. Parliament has passed laws specifically dealing with different aspects of the employer-employee relationship. Similarly, a collective agreement functions as a labour contract between an employer and a union preceded by negotiation between representatives of a union and employers represented in most cases by the management. Because CBA is a contract, for the appellant to rely on it and benefit from it has to be demonstrated that the employees were privy to it. They could only have been privy to it through the appellant itself. In the absence of such evidence we are left with no alternative but to agree with the learned Judge in dismissing the claim and with the report of the conciliator that the ten employees were entitled to payment of gratuity for the period prior to joining the salaried echelons; that the respondent to work out other entitlements enumerated in the conciliator's report to which they were entitled in accordance with the terms they served.” (Emphasis ours)
35. The Respondent submitted that in March 2019, it discovered that the union membership did not align with the current roles that some members of staff were occupying. Consequently, the Respondent informed the Claimant union of the withdrawal of membership of its employees who are excluded from union representation due to the positions they hold vide letter dated 25<sup>th</sup> March 2019. It then proceeded to inform the affected employees individually indicating their job positions.
36. It is the Respondent's submission that the affected employees held positions that were supervisory in nature and were therefore not unionisable.
37. The Respondent submitted that there was further correspondence between the parties leading to the Respondent declaring the following positions as excluded from the union by a letter dated 27<sup>th</sup> April



2024: - Bureau Chief/Senior Reporter; Business Editor; Associate Editor; Revise Editor; Chief Sub Editor; Editor; Associate Editor; Revise Editor; and Radio Producer.

38. It is the Respondent's submission that that when the employees were offered the new roles the Respondent informed them of their roles and stated that the current benefits would remain the same. However, this was an oversight by the Respondent as it had not recognized that by virtue of their promotion and confirmation into those roles, the affected employees had transitioned to non-unionisable roles as members. Upon realization of the error, the Respondent provided an explanation through its Group Talent Officer vide his letter dated 27<sup>th</sup> April 2020.
39. The Respondent submitted that due to the evolving nature of modern media, newsrooms have evolved from just newspapers to establishing radio stations, newsrooms and television stations and in consequence several additional roles emerged which were supervisory in nature.
40. On the second issue, the Respondent submitted that its decision to alter the affected members terms of service was not improper as the employees ceased being members of the category of unionisable employees as recognized by the Agreement.
41. On the third issue, it is the Respondent's submission that the cessation to deduct union dues was not unlawful and that the employees ceased being unionisable employees by virtue of their promotions and/or classification into their new roles.
42. On the final issue, the Respondent submitted that several of the affected employees requested to withdraw their membership to the union as a consequence of the communication from the Respondent's communication; as evidenced in their letters of resignation are attached from pages 3-8 of the Respondent's Bundle of Documents.
43. I have examined all the evidence and submissions of the parties herein. The claimants contend that their members were removed/excluded from union membership without due process. The respondents on their part aver that the members were excluded due to their promotion and position in the respondent's company and so could not continue discharging their duties while being unionisable.
44. The claimant and respondents have a recognition agreement and have over time concluded various CBAs. As per the latest CBA relating to the period under review, the CBA of April 2014-31<sup>st</sup> March 2016 and signed on 14/5/2014. Clause 2 of this CBA states as follows:

“ Clause 2: Union Membership

Both parties to this collective bargaining agreement shall be committed to the harmonization of better working Industrial relations between the employers and the employees. Responsibilities laid herein would only be fulfilled within the labour standards on freedom of individual choice of membership and such decisions should not affect employment, continued employment on career prospects of an individual employee. The union membership for such employees as it is covered by this collective bargaining agreement should be maintained at a high level effective on engagement...”

45. Posts referred to in the agreement are at clause 26 and include even the membership withdrawn from the union by the respondents. Under clause 1, the agreement was to be in force for 2 years and would continue unless either party gives to other one month notice to indicate their wish to amend it.
46. I have not been provided with any other signed CBA showing that the above CBA has since been amended or repealed. The claimant indicated that there is a new CBA of 2018-2020 but it has not been exhibited before this court for consideration.



47. That as it may, from the CBA of 2014-2016, membership to the union was open to all employees as per clause 2 above. This provision in the CBA is in tandem with article 41(2) of *the Constitution* of Kenya 2010 which provides for freedom of association as follows:
- (2) 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.
48. Section 48 (6) (7) and 8 of the LRA also provides a procedure that should be followed per withdrawal of members from a union and this provides as follows:
- (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
49. It is however clear that the employees herein are not the ones who issued notice of resignation from the union but rather their employer the respondents herein unilaterally informed them of their withdrawal from the union as per the letter dated 25/3/2019 from their HR director. Some members subsequently wrote to the respondents withdrawing from membership of the union and these were only Ann Njogu, Elizabeth Kungu, Njambi Mungai, Stephen Ndegwa, Quenter Mbori and Wilson Kinuthia.
50. In respect of these members who withdrew from the union voluntarily this would suffice. However, for those who were ejected out of the union by the respondent, that remains illegal and a breach of the member's rights to join and participate in the activities of the union.
51. In the foregoing therefore, this court makes a finding that the purported withdrawal of other affected members from the union vide letter dated 27<sup>th</sup> April 2020 was unlawful, un procedural null and void.
52. It also follows that the alteration of the affected members terms of service including reduction of their annual leave days from 41 to 30 was unlawful and as such null and void.
53. An order is issued herein that the respondents proceed to deduct and remit union dues of the affected members to the claimant. The respondents will pay costs of this suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8<sup>TH</sup> OF MAY, 2025.**

**HELLEN WASILWA**

**JUDGE**

