



**Kenya National Union of Service Employees v One Facility Management
(Cause E293 of 2022) [2025] KEELRC 1671 (KLR) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1671 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E293 OF 2022
K OCHARO, J
JUNE 5, 2025**

**BETWEEN
KENYA NATIONAL UNION OF SERVICE EMPLOYEES CLAIMANT
AND
ONE FACILITY MANAGEMENT RESPONDENT**

JUDGMENT

Introduction

1. By its Memorandum of Claim dated 9th May 2022, the Claimant sued the Respondent seeking the following reliefs:
 - I. A declaration that the action and or inaction by the Respondent refusing to deduct and remit union dues is unlawful and a violation of the law and *the Constitution*.
 - II. An order compelling the Respondent to deduct and remit union dues on or before the 10th of every month as required by law.
 - III. An order restraining the Respondent from intimidating or victimising the employees by virtue of being members of the union and their names appearing in the checklist filed in court.
 - IV. An order compelling the Respondent to pay union dues from his pocket for the duration the check off was served on them, since they ignored the *Labour Relations Act* 2007 provisions.
2. Opposing the Claimant's claim, the Respondent filed a Statement of Defence, denying that the Claimant had a recognition agreement with them, served them with any check-off forms, and is entitled to the reliefs sought.



The Claimant's Case

3. The Claimant presented one witness, Simon Nyamai, to testify on its behalf. The witness adopted his witness statement contemporaneous with the Memorandum of Claim herein as his evidence in chief.
4. The witness stated that on 29 April 2021, the Claimant served the Respondent with check-off notices containing 51 names of employees who had joined its membership. On 21 June 2021 and 21 July 2021, it wrote to the Respondent asking for union dues, but the Respondent refused. As a result, the Claimant was constrained to report a dispute to the Ministry of Labour.
5. On 31 January 2022, the Cabinet Secretary for Labour appointed a conciliator who convened several conciliation meetings, but the Respondent refused to attend. Consequently, the Conciliator was compelled to issue a Certificate of unresolved dispute.
6. The Respondent continued to refuse to deduct and remit union dues, thus violating employees' constitutional right to join a union of their choice. This act threatens trade unionism.
7. Cross-examined by Counsel for the Respondent, the witness stated that the 51 employees recruited at that time were cleaners stationed at the Sarit Centre. The law required that the employer deduct union dues and remit the same to the Union.
8. The Claimant has no recognition agreement with the Respondent.
9. He admitted that he couldn't tell whether the Respondent still employs the 51 employees. Further, the contract between the Respondent and the employees lapsed on 30th October 2021.
10. He didn't know how many employees the Respondent had at the time.

The Respondent's Case

11. Mr. Scaver Mwakulombi testified as the sole witness on behalf of the Respondent. He also adopted his witness statement as his evidence in chief. He stated that the Claimant did not serve any check-off notices on the Respondent as alleged. Furthermore, the Respondent was unaware of the membership of the alleged 51 employees.
12. The Respondent did not have a recognition agreement with the Claimant regarding the alleged employees. As such, there was no basis for deducting money from the 51 employees and remitting it to the Claimant, as this would have been illegal.
13. The Claimant should pursue the employees, if at all, who were its members to pay the dues directly.
14. The alleged employees provided their services under a fixed-term contract from 1 November 2019 to 1 November 2021, which was never renewed after its expiration.
15. Cross-examined by the Claimant's representative, the witness stated that the employees appearing on the check-off forms were all employees of the Respondent. The union served the Respondent with a check-off form.
16. The Respondent sought information demonstrating that the employees had been registered as the Claimant's members. When the Claimant failed to respond, the Respondent could not act. Further, the signatures on the checkoff forms purported to be the employees' differed from their known signatures. Immediately, they received the check-off forms; they approached the employees, most of whom disowned the signatures. Some said they signed the forms out of ignorance.
17. Contrary to the Claimant's assertion, the Respondent was never invited for any conciliation meeting.



The Claimant's Submissions.

18. The Claimant submitted that the Respondent's case is contradictory and misleading. On the one hand, it denies knowledge of the recruitment of the 51 employees as members of the Claimant Union, while on the other, it attempts to justify why it didn't deduct and remit dues to it.
19. Under section 48 of the *Labour Relations Act*, the Respondent was obliged to deduct and remit dues to the Claimant once it was served with the check-off forms. In breach of the law, the Respondent refused to do so. The Court should determine that the 51 employees still belong to the Respondent, as it has not provided any employment records to demonstrate that they have exited its employment. To support this, reliance was placed on the case of *Agatha Bugosi Said v Vegro Kenya Limited* [2014] eKLR.

The Respondent's Submissions

20. The order sought to compel the Respondent to deduct and remit union dues isn't grantable. It is an uncontroverted fact that the employees whom the Claimant asserts they recruited ceased to be its employees on 1st November 2021.
21. It was further submitted that the restraining relief sought cannot be availed to the Claimants as there are no material facts that were brought forth in their pleadings speaking to intimidation or victimisation of employees who allegedly were its members. Further, no evidence was presented to establish the claim.
22. The Claimant's push that the Respondent be compelled to pay sums which it allegedly did not deduct from the said 51 employees is not founded on any legal stipulation. Under section 19[5] of the *Employment Act*, the employer can only be penalized if they had made deductions but failed to remit the deducted sums. To buttress this submission, reliance was placed on the decision in *Bakery, Confectionary, Food Manufacturing and Allied Workers' Union [K] v Milly Fruit Processors Limited* [2014] eKLR.

Analysis and Determination.

23. I have carefully considered the pleadings, evidence and submissions by the parties herein, and the following issues emerge for determination;
 - I. Are the 51 employees still in the employment of the Respondent?
 - II. Is the Claimant entitled to the reliefs sought?
24. The Respondent asserted that all those employees whom the Claimant alleged to have recruited were working for it under fixed-term contracts of two years. They worked at the Sarit Centre for a client who had outsourced its [the Respondent's] services. The Claimant's witness in his evidence under cross-examination admitted that indeed all those whose names appear on the check-off forms were at the time of the alleged recruitment serving at the Sarit Centre.
25. The Respondent produced as evidence an outsourcing agreement and the client. The Respondent's assertion that beyond the appointed date of lapse of this contract, those employees stationed at Sarit Centre didn't continue working for it, in my view, was not controverted by the Claimant. If at all it had recruited them and any of them or all of them continued to work for the Respondent or are still, nothing could have been easier than for it [the Claimant] to present any or some of them to testify to the fact.



26. The fact that the Claimant didn't present any of them to testify drives this Court to make two adverse inferences against the Claimant. First, as the Respondent asserted, none of the employees continued to work for it beyond the above-stated date. Second, it is possible that those signatures on the check-off form[s] were not authentic, and some were appended out of ignorance, as alleged by the Respondent.
27. In situations where the membership of employees in a union is disputed, as in the present case, it becomes crucial for the Union to undertake the first pivotal step: demonstrating that it did indeed recruit the employees. Such proof can include a register, receipts for member registration fees, or oral evidence from the "members". The Claimant in this matter provided none.
28. For these reasons, I am not persuaded that the 51 employees are still employed by the Respondents, making it illogical for this Court to grant the requested reliefs, which heavily depend on that fact.
29. In conclusion, I find the Claimant's claim unmeritorious. It is hereby dismissed. Each party is to bear its own costs.

READ, SIGNED AND DELIVERED THIS 5TH DAY OF JUNE 2025.

OCHARO KEBIRA

JUDGE

