



**Kenya Union of Commercial, Food and Allied Workers v Laxmi Hardware Limited
(Cause E060 of 2024) [2025] KEELRC 2090 (KLR) (16 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2090 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E060 OF 2024**

**JK GAKERI, J
JULY 16, 2025**

BETWEEN

**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED
WORKERS CLAIMANT**

AND

LAXMI HARDWARE LIMITED RESPONDENT

JUDGMENT

1. The claimant union commenced the instant suit on 18th July, 2024 alleging that it had recruited 16 of the 17 unionisable employees of the respondent (94%) who had acknowledged their membership by signing the check off forms but the respondent had refused or failed to recognize the union or deduct and remit union dues.
2. The claimant alleged that if the orders sought were not granted the employees would be in danger of being victimized, threatened or coerced on account of union membership and denial of labour rights and the denial of recognition by the respondent was unlawful.
3. The claimant union prayed for:
 1. Declaration that the respondent’s refusal to sign a Recognition Agreement was unlawful and be Ordered to do so.
 2. An order that the parties engage in collective bargaining within 30 days of signing the Recognition Agreement.
 3. Order the respondent to deduct and remit union dues.
 4. Quantified costs payable by the respondent.
 5. Any other relief the court considers appropriate in the interests of justice.



Respondent's case

4. By the Replying Affidavit sworn by Dhansukhbhai Raujibhai Varsani on 8th April, 2025, the affiant deposed that he was the director of the respondent and the respondent had no employees as persons who work at its facility were employed by Syntamex Ventures Ltd and were the persons the claimant listed in its check off forms except one Mr. Kevin Obato Ondere who had since resigned.
5. The affiant deposed that the respondent was wrongly enjoined in this claim.
6. That the alleged Recognition Agreement was never served on the respondent and the claimant had not provided evidence of service of the draft agreement.
7. The claimant's witness Mr. Benjamin Yangara confirmed on cross-examination that he filed the check off forms and admitted that he had not provided evidence to prove that the 16 people named on the check off forms were employees of the respondent and had none to prove that the letters on record were served on the respondents.
8. On re-examination, the witness testified that he delivered the letters personally, the Director's Secretary received the same by declined to sign and notified the Director on his WhatsApp number and on email.
9. The respondent did not tender oral evidence and relied on the Replying Affidavit.

Respondent's submissions

10. Counsel submitted that the respondent was not served with any of the letters exhibited as No. 3 of the claimant's list of documents and CWI admitted that the letters had no evidence of having been received by the respondent, the persons listed on the alleged sheets were not its employees and the claimant had no evidence that they were employees of the respondent, be it an affidavit by an employee or employment contract.
11. Counsel submitted that the claimant bore the burden of proof according to the provisions of Section 7 and 8 of the Evidence Act.
12. Reliance was also placed on the sentiments of the Court of Appeal in *Jethwa V Shah t/a Supreme Styles* [1989] eKLR as were those of the court in *William Kabogo Gitau V George Thuo & 2 Others* [2010] eKLR on the burden and standard of proof respectively.
13. The court was unable to upload or cite the claimant's submissions in the CTS.
14. Hard copies of the claimant's submissions were delivered on the morning of 15th July, 2025.

Analysis and determination

15. The hearing and determination of the suit was significantly delayed by the respondent's Preliminary Objection, which the court dismissed on 29th January, 2025 and the claimant's application for interim orders which suffered the same fate on 19th May, 2025.
16. Equally, the claimant was not ready for the hearing slated for 11th June, 2025.
17. To buttress its case, the claimant union attached two check off forms containing 16 names in total allegedly signed by employees of the respondent.
18. However, the date on which the persons signed the forms was unclear. Attached to the forms was the forwarding letter dated 13th June, 2024, directing the respondent to deduct union dues and forward the same to the claimant Account Number 094182229 ABSA Bank Kenya PLC or Paybill No. 220832



- and Kshs.150 to COTU, citing Gazette Notice Order Number 7 of 7th January, 2022 and November 6912 of 2nd September, 2016.
19. Also attached was a letter dated 22nd March, 2024.
 20. On its part, the respondent availed documentary evidence on payment of monies to Systamex Ventures Ltd and receipt by the company which appear to show that its allegation that it had no employees credible.
 21. The issues for determination are:
 - i. Whether the claimant has proved its case against the respondent.
 - ii. Whether the claimant is entitled to the reliefs sought.
 22. On the first issue, while the claimant alleged that it had recruited 94% of the unionisable employees of the respondent, the respondent contended that those were not its employees except one.
 23. During cross-examination, the claimant's witness admitted that he had no evidence to prove that any of the persons named was an employee of the respondent.
 24. It is trite law that he who alleges bears the burden of proof.
 25. Section 107 of the *Evidence Act* provides:
 1. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
 2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
 25. Under Section 8

The burden of proof in a suit lies on that person who would fail if no evidence at all were given on either side.
 26. See *Jethwa V Shah t/a Supreme Styles* [1989] eKLR and *Mary Wambui Kabuguo V Kenya Bus Services Ltd* [1977] eKLR among others.
 27. Since the respondent denied that the alleged signatories of the check off forms were its employees, it was incumbent upon the claimant union to evidentiary demonstrate that the individuals whose names it had were indeed employees of the respondent.
 28. Evidence of contracts of employment such as payslips or other verifiable evidence would have demonstrated the relationship between the individuals and the respondent.
 29. The fact that the respondent did not adduce oral evidence in court did not diminish the claimant's duty to prove its case against the respondent. See *Nicholus Kipkemoi Korir V Hatari Security Guards Ltd* [2016] eKLR.
 30. Puzzlingly, CWI also confirmed on cross-examination that he had nothing to prove that the letters on record were served upon the respondent for a response.
 31. Evidently an affidavit of service would have effortlessly demonstrated that service was effected and the documents were received with or without any acknowledgment.
 32. The claimant did not file an affidavit of service.



33. The importance of service of documents on the other party cannot be over emphasized. It is the foundation of the adversarial system. It informs the other party the case it is required to confront and the evidence relied upon.
34. In *Kenya Union of Commercial Food & Allied Workers V Kenya Credit Traders Ltd* [2023] KEELRC 2403 (KLR) 6th October, 2023 Onesmus Makau J stated:

...The affidavit is to be accompanied by evidence of acknowledgement of receipt of the served document, and served document, and signed by the recipient accepting service. If the signature of the recipient cannot be secured, the process server is required to state so in the affidavit of service”.
35. See also *Gulf Fabricators V County Government of Siaya* [2020] eKLR.
36. The respondent’s witness deposed that even the alleged Draft Recognition agreement was not served on it but again, the claimant had evidence to show that service was effected.
37. Finally, the claimant did not provide any shred of evidence to show when the alleged employees of the respondent became members of the claimant union.
38. Copies of receipts of payment of subscription fees and membership cards would easily have shown that indeed the persons named by the claimant were members of the union.
39. Evidence of union membership, the check off forms and their service upon the respondent would have created an obligation on the part of the employer to deduct union dues by virtue of the provisions of 48 of the *Labour Relations Act* and Section 19 of the *Employment Act*.
40. For the foregoing reasons, it is the finding of the court that the claimant has failed to prove its case against the respondent.
41. Having found as above, the court is not persuaded that the claimant is entitled to any of the reliefs sought.
42. The upshot of the foregoing is that the claimant’s suit against the respondent is unsubstantiated and it is accordingly dismissed.
43. Parties shall bear own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 16TH DAY OF JULY, 2025.

DR. JACOB GAKERI

JUDGE

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty



of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

