



Kenya Private Universities Workers Union v Catholic University of Eastern Africa (Cause 4 & 239 of 2019 (Consolidated)) [2024] KEELRC 334 (KLR) (23 February 2024) (Judgment)

Neutral citation: [2024] KEELRC 334 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 4 & 239 OF 2019 (CONSOLIDATED)**

**B ONGAYA, J
FEBRUARY 23, 2024**

**BETWEEN
KENYA PRIVATE UNIVERSITIES WORKERS UNION CLAIMANT
AND
CATHOLIC UNIVERSITY OF EASTERN AFRICA RESPONDENT**

JUDGMENT

1. The union filed the Amended Memorandum of claim in cause 239 of 2019 and dated 16.08.2023 through Peter Emisembe Owiti, the General Secretary. The claimant prayed for judgment against the employer, the university, for:
 - a. A declaration that the university has blatantly violated Section 48(3) and 50(1) of the *Labour Relations Act* 2007 and Section 19 of the *Employment Act*, 2007 by refusing to deduct and or remit union dues and or withholding union dues.
 - b. A declaration that the respondent has breached Section 50(a)(8)&(10) of the *Labour Relations Act* 2007.
 - c. A declaration that the conduct and actions by the Respondent's management constitutes an offence under Section 50(10)&82(1)(2)&(3) of *Labour Relations Act* 2007.
 - d. A permanent order of injunction be issued against the respondent compelling him to implement sections 48(3) and 50(1) of the *Labour Relations Act* 2007 and Section 19 of the *Employment Act*, 2007.
 - e. An order of permanent injunction be issued and is hereby issued against the respondent herein, directing the respondent to release/remit to the applicant, with immediate effect, all union dues supposedly deducted from members of the applicant union from the month of February 2019 to date and other months, unlawfully withheld totalling to Kshs 3,177,746.58 as at



31/12/2023 and to deduct and remit to the claimant union dues of Kshs 50,491.50 month by month with effect from 01.01.2023.

- f. An order to be issued against the university directing its management to pay and or compensate from their pockets the applicant union Kshs 50,489.40 for each and every month till the determination of this application/suit for 144 members.
 - g. Any other order the Honourable cCourt may deem fit to grant for the ends of justice to materialize.
 - h. The university meet costs and incidentals interest at court rates of this application/suit.
2. The response to the amended memorandum of claim dated 20.11.2023 was filed for the university through KWEW Advocates LLP. The university prayed that the claim against it is dismissed with costs.
 3. The union's case was that in December 2018, it issued a strike notice to the university on failure to implement a good working condition due to poor pay without increment among other issues. This prompted the university to file an application under cause no. 4 of 2019 seeking to stop the strike terming it as illegal. However, parties met and compromised the issues and workers went back to work.
 4. The respondent had stopped deduction of union dues and withheld the same from members as from the month of February, 2019 to date. This prompted the claimant union to file an application under cause 239 of 2019 seeking reinstatement of deduction of union dues and paying the withheld union dues.
 5. The respondent has not been remitting union dues since the month of February 2019 to date despite the claimant union's efforts to the extent of writing letters to the respondent management over the same. The respondent last deduction to claimant union was on 31.01.2019 that was Kshs 29,804 for 85 members.
 6. In 2018 the union recruited 59 members where check off forms were forwarded to the respondent to comply with section 48 of the *Labour Relations Act*, 2007 plus Section 19 of *Employment Act*, 2007 but the respondent has refused to comply with the law.

7. Tabulation amount for 59 members was:

85 members = Kshs 29,804/=

59 members = Kshs X

85 members = Kshs 29,804.00

59 members Kshs X

Hence – 85 members × X = 59 members × Kshs 29,804/=

Kshs X × 85 members = Kshs 1,758,259/=Kshs X × 85 members = Kshs 1,758,259/=85 members 85 members59 members = Kshs 20,685.40Thus 59 members' deduction on monthly basis was to be Kshs 20,685.40 and 85 members monthly deduction was Kshs 29,804/=For 85 members non-deduction and non-remittance from February 2019 to date: (85 members) 29 months × 29,804/- Kshs 864.316/= .For 59 new members recruited in 2018 from January to March 2018 but upon submission of Forms to respondent who refused to comply with section 48 of the *Labour Relations Act*, 2007 & section 19 of the *Employment Act*, 2007 to effect the deduction from April 2018, Kshs 20,687 × 38 months = Kshs 789,106/=.Hence, total outstanding un-deducted union dues:= Kshs 864,316/= + 786,106/= = Kshs 1,650,422/=

1. Year 2019 – Kshs 1,650,422/= × 14% = Kshs 1,881,481.08/=



2. Year 2020 – Kshs 1,881,481.08 × 14% = Kshs 2,144,888.43/=
3. Year 2021 – Kshs 2,144,888.43 × 14% = Kshs 2,445,172.80/=
4. Year 2022 = Kshs 2,445,172.80 × 14% = Kshs 2,787,497/=
5. Year 2023= Kshs 2,787,497/= × 14% = Kshs 3,177,746.58/=

Hence, the outstanding un-deducted and or unremitted union dues to date is Kshs 3,177,746.58 payable to the claimant union.

8. It is the union's case that the respondent is blatantly contravening section 48 of the labour relations act 2007 despite the existing, valid and enforceable Form S (Check-off forms) properly forwarded to the respondent management.
9. The respondent has suddenly and without any instructions from union members stopped deductions of union dues contrary to section 48 of Labour relations act 2007 and section 19 of employment act 2007.
10. The respondent had neither deducted nor remitted union dues supposedly deducted from union members in from the month of February 2019 payroll to date.
11. The respondent management unilaterally stopped deduction of union dues from members who had duly signed Form S.
12. It is the claimant's case that the respondent's non implementation of section 48 of Labour Relations Act, 2007 plus section 19 of the Employment Act 2007 since 2017 up to February 2019 is irregular unconstitutional, unlawful and illegal.
13. The claimant maintains that the conduct and continued actions by the respondents management constitutes an offence under section 50 (1) (8) (i) (ii) & (10) of Labour Relations Act 2007.
14. The conduct and continued actions by the respondent's management attracts application of section 82(1)(2) & (3) of Labour Relations Act 2007.
15. The conduct and continued actions by the respondent's management blatantly violates Articles 36, 41 & 47 of the Constitution of Kenya 2010 as it threatens the fundamentally protected right of an employee to belong to a union of choice.
16. The claimant's case is that the respondent's conduct does not conform to the best labour practices developed under the labour relations arrangements and more so where parties acknowledge the existence of a recognition agreement.
17. On the part of the respondents it is argued that there exist similar causes pertaining to the same live issues and involving similar parties before other Judges of concurrent jurisdiction including ELRC Cause number E388 of 2023 Kenya Private Universities Workers Union vs. Catholic University of Eastern Africa, ELRC Cause No. 805 of 2017 Kenya Private Universities Workers Union Vs. Catholic University of Eastern Africa ELRC E581 of 2021 Kenya Private Universities Workers Union vs. Catholic University of Eastern Africa among others. Thus, the suit is not only sub judice but a continuation of the same pattern of abuse of the court process and defiance of common sense and the law. Determination of one may lead to absurdity and embarrassment of the court.
18. The suit is an attempt by the claimant to shop for a forum where it can receive favourable orders and the respondent prays that the court does not fall for it.



19. The claimant has no locus standi to file and bring this suit as there is no recognition agreement, the same being null and void by operation of the law for reasons that the claimant does not meet simple majority requirement, the same was obtained fraudulently as at no point did the claimant ever meet the simple majority requirement and it did not receive the consent, endorsement and execution by the university council as stipulated under the *universities act*, additionally it offends provisions of sections 48, 49, 50, 54, 55 and 60 of the *Labour Relations Act*.
20. The respondent states that the purported recognition agreement was terminated by the respondent and the claimant cannot therefore claim to rely on it.
21. The respondent has about 543 staff and continues to employ every now and then and thus the claimant does not meet the threshold for recognition.
22. The list of members relied on by the claimant is made up of fake names including staff who passed; people who are not employees of the university and persons who separated from the respondent long ago and therefore not employees of the university and are being used mischievously by the claimant to advance its narrative.
23. The list of members has members who were part of the respondent's staff at its Kisumu campus, which was closed in 2019, and some of the employees left as they felt it was difficult to transition to Nairobi.
24. The remaining purported members of the union have resigned from the union and requested the respondent to stop making deductions and the respondent only implemented their wish.
25. Through the orders sought the claimant's wish is to circumvent the requirements that it must recruit and once recruited, request its members to consent to any deductions.
26. The claim is fatally defective as it is not accompanied by any complaint by any purported member or purported chapter representative.
27. There is no complaint whatsoever from any member that some dues were deducted from their salary and never remitted.
28. The respondent never made any deduction on any salary of the purported members of the claimant at the periods in question.
29. The respondent does not owe the claimant anything and granting orders as prayed will be equivalent to enriching the claimant unjustly.
30. Orders sought have been bypassed by time and other suits filed by the claimant.
31. While the claimant alleges that the deduction is criminal, it is yet to file any complaint at the police or Directorate of Criminal Investigation for criminal action to be taken.
32. The respondent states that the suit is filed in bad faith as the claimant realized that other union including Kenya Union of Domestic Hotels Educational Institutions Hospitals & Allied Workers (KUDHEIHA) have been conducting recruitment exercise in an effort to reach the simple majority so as to be recognized.
33. Recognizing the claimant will disadvantage the other Unions that are working hard for the same prize and will be in violation of employees' rights as enshrined in *the constitution* of Kenya 2010.
34. The respondent requests the court to dismiss the suit and make a finding that the claimant does not meet the threshold for recognition and the only solution that lies is for them to conduct recruitment.



35. In Cause 4 of 2019 the university has submitted that its claim is contained in the memorandum of claim and amended response to the amended memorandum of claim dated 20.11.2023. In the memorandum of claim filed on 27.01.2019 filed through WEW and Associates Advocates, the university prayed for judgment against the claimant for:
- a. A declaration that the purported recognition agreement between the claimants and the respondent dated 30.11.2017 or any other purported recognition agreement between the claimant and the defendant is illegal thus null and void.
 - b. The claimant further prayed that the purported strike scheduled to begin on 07.02.2019 or thereabouts is illegal null and void.
 - c. The claimant be permanently restrained from commencing, proceeding with , initiating any industrial action or calling for strike or threatening the claimants with any form of industrial action.
 - d. Costs of the suit.
 - e. Any further or other relief the Honourable Court may deem fit to grant.
36. The parties agreed that the suits be determined based on the pleadings and documents filed for parties. The parties filed their respective submissions. The court has considered the parties' respective cases, material on record and makes finding as follows:
- a. With respect to the suit by the university, no submissions were made for the university or the union with respect to allegations and prayers about the strike being declared illegal and the union being permanently restrained from calling a strike or engaging in industrial unrest. The Court returns that the prayers in that regard are abandoned.
 - b. With respect to the university's claims that the recognition agreement in issue was illegal, null and void no evidence was provided to support the prayer and the Court returns that the prayer is unjustified for want of evidence as it was not established at all. The wording of the prayer is that indeed the parties concluded the recognition agreement. In absence of relevant evidence, the Court shall not interfere with the recognition agreement.
 - c. With respect to the prayers by the unionj, the Court finds that there is no sufficient evidence on record to support the claims and prayers. In particular, the claimed union dues are in the nature of special damages; which must be specifically pleaded and strictly proved. The union has not provided evidence to establish the members who are subject of the claim, the evidence they were deducted union dues and not remitted or liable to such deductions, and that throughout the period and years of the claim the members have been in the respondent's employment. The claim and prayer for union dues will collapse for want of strict proof.
 - d. The parties have not submitted or shown that they exhausted the conciliation procedure under the *Labour Relations Act* and it appears that their respective suits were premature in that consideration.
 - e. As submitted for the university, if failure to deduct and remit union dues is a crime that has taken place, nothing precludes the union from making a criminal report for appropriate prosecution of the university as the employer as may be culpable.

In conclusion the suits as consolidated are dismissed with orders each party to bear own costs and parties to seek to comply with relevant provisions of the *Labour Relations Act*, 2007 with respect to their relationship.



**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS
FRIDAY 23RD FEBRUARY 2024.**

BYRAM ONGAYA

PRINCIPAL JUDGE

