



**Kenya Union of Domestic, Hotels, Educational Institutions & Hospitals  
Workers Union (KUDHEIHA) v Seasons Hotel & Lodges (Cause  
011 of 2023) [2024] KEELRC 308 (KLR) (22 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 308 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE 011 OF 2023  
DN NDERITU, J  
FEBRUARY 22, 2024**

**BETWEEN**  
**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS  
& HOSPITALS WORKERS UNION (KUDHEIHA) ..... CLAIMANT**  
**AND**  
**SEASONS HOTEL & LODGES ..... RESPONDENT**

**RULING**

**I. Introduction**

1. In a memorandum of claim dated 2<sup>nd</sup> February, 2023, filed in court on even date, the claimant herein, a duly registered trade union, seeks for the following reliefs against the respondent –
  - A. The respondent to be compelled to deduct and remit union dues as has been the practice.
  - B. The respondent be instructed to pay the outstanding arrears of union dues.
  - C. The claimant prays that the management should pay the monies owed to the union with his own monies.
  - D. The respondent should be estopped from victimizing members of the union.
  - E. The cost of this suit and interests thereupon.
2. Alongside the claim was filed a notice of motion of even date (the application) in which the claimant is praying for the following orders –
  1. That this Honourable court to be pleased to certify this application as being urgent and allow the same to be heard on priority basis.



2. That the respondent be compelled and instructed to deduct and remit union dues as indicated under section 48(1)(2)(3) and section 50(1) of the [Labour Relations Act](#) 2007.
  3. That the respondent be compelled and instructed to deduct and remit union dues as indicated under section 19(1) (a) (f) (g) and section 19(4) of the [Employment Act](#) 2007.
  4. That the respondent be found in violation of fair labour practice by not adhering to Section 48(1)(2)(3) and section 50(1) of the [Labour Relations Act](#) that mandates the respondent and prescribes the deduction and remittances of union dues.
  5. That the respondent to be held personally liable for deductions and non-remittance of union dues under Section 19(5) of the [Employment Act](#) 2007.
  6. That the respondent for blatantly refusing, failing or ignoring to remit union dues be instructed to personally pay the outstanding dues under section 19(6) of the [Employment Act](#) 2007.
3. The application is based on the following grounds stated on the face of the application –
1. The claimant has membership drawn from the work force of the respondent.
  2. The claimant has recruited members to the union and has served the respondent with check off forms No. 003361.
  3. The respondent has failed, refused and or ignored to address themselves to labour laws by fragrant disregard and/or refusal to deduct and remit union dues.
  4. The respondent has willingly through their acts and omissions disregarded amicable resolution to the dispute of deduction and remittance of the union dues.
  5. The acts and omissions of respondents in regard to non-deduction and non-remittances of union dues have exposed the claimant to ridicule and disrepute.
  6. In the interest of justice, fair labour practice and upholding the spirit set by the labour laws that the order sought herein be granted
4. The application is supported with the affidavit of Susan Wanjiru sworn on even date.
  5. There is an affidavit on record that the court process, including the application, was served upon the respondent via email on 1<sup>st</sup> November, 2023. However, there is neither confirmation nor acknowledgment that the respondent actually received the process. There is also no response to the application or the cause from the respondent.
  6. In support of the application the claimant filed submissions dated 13<sup>th</sup> August, 2023 filed in court on 14<sup>th</sup> August, 2023.
  7. The claimant has asked the court to rule in its favour in view of lack of a response from the respondent and on the basis of the evidence placed before the court.

## **II. Analysis & Determination**

8. Of necessity, an interlocutory application should seek for interim orders pending such further and or other orders or directions of the court, or pending inter partes hearing thereof, or pending the hearing and determination of the main cause. Unless for summary judgment, there is no way that an



interlocutory application may seek conclusive or final orders that shall effectively dispose of the main cause.

9. The claimant through the application is seeking for the same orders sought in the main cause, yet the orders in the application are not sought in the interim but as final and conclusive orders. Whether this defect or misnomer is intentional or out of ignorance is not within the purview of this court to speculate on.
10. What is clear is that if the court were to allow the application in the manner and style of the orders sought, the court shall have prejudged the cause and determined and disposed of the same through this application. Such an action shall greatly prejudice the respondent.
11. As stated above, the affidavit of service filed does not prove service of the court process upon the respondent as no email message is annexed thereto and there is no confirmation that the process was indeed and in fact received by the respondent via its alleged email. In other words, the court can neither confirm nor authenticate the service as alleged.
12. For all the foregoing reasons, the notice of motion by the claimant dated 2<sup>nd</sup> February, 2023 is hereby denied with no orders as to costs.
13. The claimant is ordered to physically serve the claim against the respondent within 15 days of this ruling, alongside a mention notice, for the parties and or their counsel to appear before court for directions on an appointed date.

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT NAKURU THIS 22<sup>ND</sup> DAY OF FEBRUARY, 2024.**

.....

**DAVID NDERITU**

**JUDGE**

