



**Universities Academic Staff Union (UASU) v Moi University (Employment and Labour Relations Petition E087 of 2023) [2024] KEELRC 270 (KLR) (13 February 2024) (Judgment)**

Neutral citation: [2024] KEELRC 270 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS PETITION E087 OF 2023  
AN MWAURE, J  
FEBRUARY 13, 2024**

**BETWEEN  
UNIVERSITIES ACADEMIC STAFF UNION (UASU) ..... PETITIONER  
AND  
MOI UNIVERSITY ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Petitioner filed a Petition dated 5<sup>th</sup> May 2023.

**Petitioner's Case**

2. The Petitioner avers that the union has a Recognition Agreement and has signed various Collective Bargaining Agreements (CBAs) from time to time with the Respondent through the Respondent's Employer Federation known as Inter Public Universities Councils Consultative Forum (IPUCCF) in accordance with the Constitution and the Labour Relations Act.
3. The Petitioner avers that pursuant to the above, the Respondent have a duty to deduct monthly subscriptions as union dues and agency fees from its members and remit the same to the Petitioner in accordance with section 50 of the Labour Relations Act.
4. The Petitioner avers that contrary to the Labour Relations Act, the Recognition Agreement and CBA currently in force between the two parties, the Respondent has failed to remit to the petitioner, the members' monthly union dues and agency fees which the Respondent already deducted from its members.
5. The Petitioner avers that it has been financially constrained to offer services to its members and the Respondent's actions has jeopardized the smooth running of the union contrary to the Labour Relations Act and Article 41 of the Constitution.



6. The Petitioner avers that despite several reminders, the Respondent has refused, neglected and/or delayed to remit to the Petitioner its members' subscriptions and agency fees that they have already deducted with no justifiable reason or cause.
7. The Petitioner avers that the Respondent's actions is illegal, ultra vires and amounts to breach of its constitutional rights as contained in Article 41(2) (4) and 47 of the Constitution.
8. The Petitioner avers that the Respondent's actions has brought the operations of the Union to financial difficulties contrary to article 41 of the Constitution and in violation of the labour rights as expressed in the Labour Relations Act.
9. The Petitioner avers that at the date of filing the Petition, the Respondent owes the Petitioner Kshs 25,017,316.35 unremitted union dues and agency fees for the period August to December 2021, March, May & December 2022 and January- March 2023.
10. As at the date of this judgment, the Respondent has not filed any pleading in opposition of the Petitioner's Petition herein.

### **Petitioner's Submissions**

11. The Petitioner submitted that Section 50 (1) of the Labour Relations Act, 2007 provides that any amount deducted in accordance with the provisions of this Part shall be paid into the designated trade union or employers' organisation account within ten days of the deductions being made.
12. The Petitioner submitted that despite the Respondent deducting the union dues from its members, it has failed to remit to the Petition as per Section 50 (1) of the Labour Relations Act and the CBA in force which is in breach of the Respondent's obligations.
13. It relied on Said Ndege v Steel Makers Ltd [2014] eKLR and Kenya Concrete, Structural, Ceramic Tiles Wood Plys and Interior Design Workers Union v Wanxin Investments Limited [2021] eKLR.
14. The Petitioner submitted that the Respondent's actions have resulted in the infringement of article 41 and 48 of the Constitution and Section 48(2)(a)(b) and 50(1) of the Labour Relations Act.

### **Analysis and Determination**

15. Section 48 (1), (2) and (3) of the Labour Relations Act provides: -

- " 1) In this Part "trade union dues" means a regular subscription required to be paid to a trade union by a member of the trade union as a condition of membership.
- (2) A trade union may, in the prescribed form, request the Minister to issue an order directing an employer of more than five employees belonging to the union to—
  - (a) deduct trade union dues from the wages of its members; and
  - (b) pay monies so deducted—
    - (i) into a specified account of the trade union; or
    - (ii) in specified proportions into specified accounts of a trade union and a federation of trade unions.



- (3) An employer in respect of whom the Minister has issued an order under subsection (2) shall commence deducting the trade union dues from an employee's wages within thirty days of the trade union serving a notice in Form S set out in the Third Schedule signed by the employees in respect of whom the employer is required to make a deduction."

16. Additionally, section 49 of the Act reads:

"A trade union that has concluded a collective agreement registered by the Industrial Court with an employer, group of employers or an employers' organisation, setting terms and conditions of service for all unionisable employees covered by the agreement may request the Minister to issue an order requiring any employer bound by the collective agreement to deduct an agency fee from the wages of each unionisable employee covered by the collective agreement who is not a member of the trade union."

17. Lastly, Section 50 (1) and (8) provides that:-

- "(1) Any amount deducted in accordance with the provisions of this Part shall be paid into the designated trade union, or employers' organisation account within ten days of the deduction being made.
- (8) No employer shall—
- i. fail to comply with an order or a notice issued under this Part;
  - ii. deduct any money and not pay it to a trade union; or
  - iii. pay money into an account other than the account designated in the notice issued by the Minister."

18. The *Labour Relations Act* under Section 50 (10) is very firm that the above provisions are mandatory and any party in breach of the same commits an offence.

19. The court in *Banking, Insurance & Finance Union (Kenya) v Maisha Bora Sacco Society Limited* [2016] eKLR held that:

"Where the Respondent deducted Union due in July 2014 and failed to remit to the Claimant and or make confirmation to the Claimant of such deduction of Union dues with regard to the members or make the required returns with the Registrar of Trade Unions as directed by the Order of the Minister and in accordance with section 50 of the *Act*, such is in violation of the law and the sanction on set out under section 82 of the *Act* where a penalty of kshs.10,000.00 is due. However, to foster peaceful industrial relations between the parties herein and noting the finding that Recognition of the Claimant is due, I take it that the parties will commence a harmonious working relationship that fosters fair labour relations between the unionisable employees and the Respondent. However, the proceedings herein would have been avoided had the respondent not remained adamant, failed to respond to letters from the claimant, deducted Union dues in July 2014 and failed to remit and when a draft Recognition Agreement was forwarded to them they refused and or ignored to sign and as such costs are due to the claimant.

Where Union dues are required to be deducted and remitted to a Trade Union of federation of Trade unions, where such dues are not deducted and remitted as legally due, or the



employer has deducted and failed to remit to the subject Trade union, the employer shall pay such dues from its own accounts and remit in accordance with the Order published by the Minister. Such uncollected dues from the unionised employees cannot be received from the employee as the employer is at fault and there is evidence of being served with check-offs of more than 5 employees members of the Claimant Union. Such is the sanctity of the law and Constitution with regard to giving effect to the right to associate and unionise under article 36 and 41.”

20. The court has considered the pleadings and submission hereto both in writing and orally. The respondent had at some point admitted they were ready to settle the matter but it never happened. The respondent then informed the court they were waiting for funds from the exchequer. This did not sound correct because this was moneys due to their employees and they withheld it illegally. They must therefore remit the same to the claimant.
21. In view of the foregoing the court holds that the petition dated 5<sup>th</sup> May 2021 is merited and so grants the following prayers:-
  - a. Judgment is entered in favour of the petitioner for kshs 25,017,316.
  - b. An order is issued compelling the respondent to remit monetary dues and agency fees to the petitioners deducted from all members of the union in accordance with section 50 of labour relations act going forward.
  - c. Respondent to pay costs of this suit and interest of the judgment sum from date of this judgment till payment in full.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 13<sup>TH</sup> DAY OF FEBRUARY 2024**

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**ANNA NGIBUINI MWAURE**

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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 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.

A signed copy will be availed to each party upon payment of Court fees.

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**ANNA NGIBUINI MWAURE**

**JUDGE**

