



**Kenya Private Universities Workers Union v Don Bosco Utume
Salesian Theological College (Employment and Labour Relations Cause
1347 of 2018) [2024] KEELRC 230 (KLR) (9 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 230 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 1347 OF 2018
AN MWAURE, J
FEBRUARY 9, 2024**

**BETWEEN
KENYA PRIVATE UNIVERSITIES WORKERS UNION CLAIMANT
AND
DON BOSCO UTUME SALESIAN THEOLOGICAL COLLEGE ... RESPONDENT**

RULING

1. The claimant has made an application dated 3rd October 2023 seeking the following prayers:
 1. That the application be heard ex parte in the first instance and on priority basis.
 2. That the honourable court be pleased and issue an order to pay the claimant herein kshs 475,200/- being the union dues arrears from its own pocket with immediate effect.
 3. That the honourable court do and hereby issue an order against the respondent to immediately initiate deduction and remittance of union dues from all members of the claimant/applicant at the end of every month starting from the end month after delivery of the ruling of this application.
 4. That the honourable court do issue an order against the respondent to pay interest at the courts rates on the union dues arrears as from the time it started accruing.
 5. That the costs of this applicant be provided for by the respondent
 6. That any other relief the honourable court may deem fit to grant.



2. The deponent is Peter Emisembe Owiti the applicant general secretary who states that the honourable court issued orders in November 2019 and provided as follows:-

“The respondent is hereby ordered to comply with section 48 of the *labour relations act*, 2007 by way of deducting union dues from the five members and remitting the same in the claimant’s gazetted bank account and in respect of any other employee who may be recruited by the union. Here attached and marked appendix PEO1 is a copy of the said judgment.

3. He says the amount due to the applicant members is kshs 475,200. He says the orders sought should be granted to protect the integrity and dignity of the honourable court.
4. He further says that the respondent should have appealed against the order of the court if at all they were dissatisfied with the same.

Respondent’s Replying Affidavit

5. Abel Njeru says he is the rector of the respondent and is competent to swear this affidavit.
6. He says the judgment and decree issued by the honourable member has neither even dispute nor has been appealed.
7. He further says the judgment and decree was to the effect that five members belonged to the union as at the date of filing the suit and even at judgment and it was the dues of the members that were to be remitted to the union.
8. He says the said members are non existent since the original recruitment form only contained 19 members and not 22 as the applicant wants the court to believe.
9. He says out of the 19 members recruited 17 of them wrote to expressly distance themselves from the union and the court held that these employees were not members of the union, as they could not be forced to join the union.
10. He says the only 2 employees namely Pauline Karanja and Njenga Samuel in the recruitment list did not sign the joint letter to distance themselves from the union and Pauline Karanja was not a unionisable member as she was part of the administration while Samuel Njenga left the college before the alleged recruitment.
11. He says the respondent was therefore not constrained to remit any dues to the applicant as there is in effect no employee of the respondent who is bona fide member of the applicant.
12. He says the applicant has a paper judgment as there are no union members employed by the respondent. He prays the applicant’s application be dismissed with costs.

Claimant’s response to the respondents replying affidavit.

13. Claimant in their response retaliates that the court’s judgment and decree has not been disputed. They aver that the same is in line with section 48(2) of the *labour relations act*.
14. He says there is no evidence that the respondent complied with the said section 48(2) of the *labour relations act*. He says the respondent is in violation of the said proviso as well as section 19 of the *employment act*.
15. He says the issue raised of non existent of membership is null and void as it was noted in the conciliation report dated 28th June 2018 that the respondent refused to remit their dues.



16. The claimant states the two employees who refused to distance themselves from the union did so because they refused to be coerced to leave the union.
17. The claimant avers the respondents replying affidavit is frivolous and should be dismissed with costs.

Claimant's Submissions

18. The same undated submissions were considered by the court.

Respondents submissions

The court also considered the respondent's submissions dated 2nd November, 2023.

Analysis and Determination

19. The claimant had filed a claim on 31st August 2018 praying that the respondent be ordered to comply with section 48 of the *labour relations act* 2007 by way of deducting union dues and remitting to the claimants gazetted bank account.
19. The honourable court allowed prayer 1 allowing for deduction of union dues of 5 members only. The order read:

“the respondent is hereby ordered to comply with section 48 of the *labour relations act* 2007 by way of deducting union dues from the five members and remitting the same in the claimants gazetted account and in respect of any other employees who may be recruited by the union” this judgment was delivered on 29th November 2019.
19. The said judgment being a judgment of a competent jurisdiction has neither been appealed nor disputed. The respondent admitted as much.
19. In his replying affidavit it is like he is litigating the case all over again going by the issues he is raising. Clearly, he should have appealed the decision or prayed for the same to be reviewed.
19. Instead he sat on his rights from 2019 until 3rd October 2023 when the claimant filed the present application that he filed the replying affidavit dated 12th October 2023.
19. That cannot be entertained by this court which will not go into the merits of whether the judgment was proper or not or whether the members whose dues the court ordered to be remitted were member of the respondent or not. These were issues that could have been handled at the trial or at the least during an appeal or review application. As things stand the judgment delivered on 29th November 2019 and decree dated 27th September 2023 are still unchallenged and are not set aside.
19. It is trite law that courts do not make orders in vain and court orders unless set aside must be obeyed. Even if the respondent claims in his replying affidavit that the members he was ordered to remit their dues are no longer their employees however they should have raised that in an appeal or review application.
19. Even in their replying affidavit there is no evidence to show the five members were not their employees or were not members of the union. As employers they had the records which they should have produced in court. The court finds the respondents blatantly ignored the orders as per the judgment delivered by a competent court. In the case of Trusted Society of Human Rights and Cabinet Secretary



For Devolution and Planning and 3 Interested Parties including the Hon The Attorney General –
Petition No 351 of 2015 the court held that

“it cannot be disputed that an order of the court has to be respected by the parties who are bound by it. So every effort must be made to implement the order of court and not to disobey the same.”

19. The respondent ignored the court orders as per the judgment delivered by the honourable court. The court therefore grants the orders prayed vide the notice of motion application dated 3rd October 2023 save to clarify that interest will accrue from the date of judgment till full payment and the said interest will be calculated at court rates.
20. Cost will be paid by the respondent to the claimant.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 9TH DAY OF FEBRUARY, 2024.

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 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 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.

ANNA NGIBUINI MWAURE

JUDGE

