



**Kenya Private Universities Workers Union v Mount Kenya University
(Cause 117 of 2020) [2024] KEELRC 665 (KLR) (15 March 2024) (Ruling)**

Neutral citation: [2024] KEELRC 665 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 117 OF 2020
J RIKA, J
MARCH 15, 2024**

**BETWEEN
KENYA PRIVATE UNIVERSITIES WORKERS UNION CLAIMANT
AND
MOUNT KENYA UNIVERSITY RESPONDENT**

RULING

1. On 18th June 2021, the Court made a Ruling, dismissing a Notice of Preliminary Objection filed by the Respondent, and dismissing also, an Application filed by the Claimant Union dated 26th February 2020.
2. While the Respondent sought striking out of the Claim on the ground that Parties have not executed a Recognition Agreement, the Claimant prayed for an order compelling the Respondent to deduct and remit trade union dues.
3. The Claimant filed an Application for Review of the Ruling, dated 30th August 2023. It urges the Court to review its Ruling dismissing the Application, and allow prayer number 4 of the dismissed Application, which sought to have the Respondent compelled to deduct and remit trade union dues in favour of the Claimant.
4. In addition to review orders, the Claimant proposes to the Court that the Respondent is ordered to pay trade union dues in arrears; is ordered to continue deducting and remitting trade union dues monthly; and that the Claim is determined under Rule 21 of the Employment and Labour Relations Court [Procedure] Rules, 2016, which allows the Court to determine Claims on the basis of documentation.
5. The Respondent is opposed to the Application, relying on the Affidavit of its Human Resource Officer, Stella Nzilani, sworn on 19th October 2023.



6. The Respondent states that the Claimant has not satisfied standards of review, under Rule 33 of the Court's Procedure Rules. The Respondent cannot deduct and remit trade union dues from the salaries of its Employees. The Employees have denied signing check-off forms. They have given express instructions to the Respondent, not to deduct and remit trade union dues. The Respondent has pleaded that some documents relied on by the Claimant are forgeries. It is opposed therefore, to proceeding with the Claim under Rule 21.

The Court Finds

7. The Application for Review has not satisfied review standards, under Rule 33 of the Court's Procedure Rules. There is no discovery of new and important matter or evidence not in the knowledge of the Claimant at the time of the Ruling; there is no mistake or error apparent on the face of the record; the Ruling does not require clarification; and no sufficient reason has been shown to warrant review.
8. The documents relied upon by the Claimant are contested. Some are alleged to be forgeries. This is a grave allegation, which the Claimant should be interested in disproving, through a full trial of the facts. Rule 21 can only be invoked, where the documents are uncontested. Where they are alleged to be forged or inauthentic, they must be subjected to full trial, and their authenticity established, by their author.
9. The obligation of an Employer under Section 48 to deduct and remit trade union dues, is similarly contested. It is one of the substantive prayers sought by the Claimant through the Statement of Claim. It is based on the same documents which are contested by the Respondent. It is not a prayer which can suitably be granted, as an interlocutory measure.
10. The Claimant must bring evidence and establish its entitlement to trade union dues, and show which Employees, have authorised deductions. It would be prudent, to let the Employees whose documents are alleged to be forgeries, appear in Court and assist the Court on the origins and authenticity of these documents, which have been ascribed to them. This ought to be done, before an order authorizing deductions, can be granted.
11. If the Claimant has recruited members from the Respondent institution, those members can conveniently remit their trade union subscriptions directly to the Claimant. It is not prudent to compel the Respondent to collect trade union dues on behalf of the Claimant, while the Respondent apprehends that the Employees have not given authority to the Respondent to deduct and remit trade union dues, and more so when there are documents at the heart of the dispute, upon which the grant of authority to deduct rests, which are alleged to be forged. The Respondent would be exposed to claims by Employees, for illegal salary deductions and damages for contractual breach. It would be exposed to claims of acting on forged documents, to violate the statutory protections accorded to the Employees' salaries, under Sections 17 -19 of the *Employment Act*. The Claimant is not prejudiced by the Respondent not being compelled to deduct and remit trade union dues in the interim, because the law allows Employees, to remit their subscriptions directly to their trade unions.
12. The Application for review is not merited and is unnecessary, whose effect is to delay hearing and conclusion of the substantive Claim.

It Is Ordered

- a. The Application filed by the Claimant dated 30th August 2023 is declined.
- b. Costs to the Respondent.



DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI,
UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT
PRACTICE DIRECTIONS, 2020, THIS 15TH DAY OF MARCH 2024.

JAMES RIKA

JUDGE

