



Kenya Shoe and Leather Workers Union v Technoplast Limited (Employment and Labour Relations Cause E547 of 2023) [2024] KEELRC 613 (KLR) (14 March 2024) (Ruling)

Neutral citation: [2024] KEELRC 613 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E547 OF 2023**

BOM MANANI, J

MARCH 14, 2024

BETWEEN

KENYA SHOE AND LEATHER WORKERS UNION CLAIMANT

AND

TECHNOPLAST LIMITED RESPONDENT

RULING

Background

1. The Claimant is a Trade Union that represents unionized employees in the shoe and leather sector in the Republic of Kenya. It has a recognition agreement with the Respondent which entitles it to represent its members who work for the Respondent.
2. In terms of Part VI of the *Labour Relations Act*, the Claimant is entitled to be paid trade union dues by its members who are in the employment of the Respondent. In addition, it is entitled to be paid agency fees by individuals who are in the employment of the Respondent and who draw a benefit from Collective Bargaining Agreements (CBAs) that may have been concluded between the parties notwithstanding that such individuals are not its members.
3. Under section 48 of the *Labour Relations Act*, the Respondent is required to deduct trade union dues from its employees who are the Claimant's members and remit the same to the Claimant. However, this should only be done after the Claimant has obtained a Ministerial Order permitting the exercise and served it on the Respondent.
4. Under section 49 of the Act, the Respondent is obligated to deduct and remit to the Claimant agency fees from its employees who are not members of the Claimant but who draw a benefit from the CBAs concluded between it and the Claimant. This latter arrangement also requires the sanction of the Minister.



5. Notwithstanding the foregoing, section 52 of the Act contemplates a scenario where members of a Trade Union may pay union dues directly to the Trade Union. In such case, the employer need not deduct the dues from the employees
6. The Claimant avers that it forwarded to the Respondent a check-off form containing details of its members who are in the Respondent's employment to enable the Respondent effect monthly union deductions from their salaries. However, it was realized that some of the affected employees were not in regular employment of the Respondent. As such, they could not be subjected to monthly deductions.
7. In a bid to surmount this obstacle, the parties allegedly agreed that the Respondent shall remit to the Claimant standard monthly payment of Kshs 30,000.00 to cover those members who are engaged on casual terms. However, the Respondent suddenly stopped making the payment.
8. Instead, it (the Respondent) has contested the arrangement and asserted that the sum of Kshs 1,680,000.00 already paid under the purported scheme was erroneously paid. Consequently, it (the Respondent) has demanded reimbursement of the amount.
9. The Claimant avers that the Respondent has been withholding Kshs 30,000.00 per month in purported recovery of the alleged erroneous payment. The Claimant contests this decision on the grounds that the monthly payment of Kshs 30,000.00 was made pursuant to an agreement between the parties.
10. On its part, the Respondent contends that the monthly payment of Kshs 30,000.00 to the Claimant was erroneous. This erroneous payment had accumulated to Kshs 1,680,000.00 as at May 2022 and must be recovered.
11. The Respondent avers that the payments were made on behalf of employees who did not have regular contracts of service. Since these employees were serving on casual contracts, it was not possible for it (the Respondent) to recover the money paid on their behalf from their salaries once it was paid to the Claimant.
12. According to the Respondent, the employer is only obligated to deduct Trade Union dues from employees who are on monthly pay roll. In the Respondent's view, this obligation does not extend to employees who are on casual engagement.
13. Together with the Memorandum of Claim, the Claimant filed the application dated 11th July 2023. In the motion, the Claimant prays for orders to compel the Respondent to remit all outstanding trade union dues and agency fees which had been deducted from its (the Claimant's) members in terms of sections 48 and 49 of the *Labour Relations Act*.
14. The Claimant avers that it has a valid CBA with the Respondent. That pursuant to the CBA, the Respondent has been deducting trade union and agency fees but not remitting the entire of it to it (the Claimant). The Claimant avers that from April 2023, the Respondent has been irregularly withholding Kshs 30,000.00 from the monthly collections. Thus, it seeks an order that the dues be paid.
15. After considering the application, the court issued an interim order directing the Respondent to remit to the Claimant the outstanding union dues and agency fees that have been withheld. Further, the court directed the Respondent to continue to remit these dues as and when they are deducted until the application was heard and determined.
16. On 16th August 2023, the Respondent applied to have the above orders set aside. The Respondent contends that since October 2019, it has been making erroneous monthly payments of Kshs 30,000.00



to the Claimant on behalf of casual employees from whom it (the Respondent) cannot recover the amounts. And hence, the decision to stop the payments and recover the payments already made.

17. The Respondent contends that to compel it to continue making the impugned payments to the Claimant will be irregular since this will, in effect, force it to shoulder the burden of the casual employees who are not on regular pay. The Respondent has averred that it is willing to abide by any conditions that the court may set.

Analysis and Determination

18. As indicated earlier, the law obligates employers to deduct trade union dues from employees who are members of a trade union and remit them (the money collected) to the trade union. However, there is no legal requirement that these payments be sourced from the employer's own resources. The payments must have been deducted from the income of members of the trade union.
19. This obligation on the employer is in recognition of the fact that it is him (the employer) who settles the employees' salary. Therefore, it is convenient to have him (the employer) make the deductions at source. That notwithstanding, an employee is entitled by law to make these payments directly to the trade union.
20. In my view, where an employee is a member of a trade union but is not on regular salary, he may elect to remit the trade union dues directly to the trade union in terms of section 52 of the *Labour Relations Act*. However, the parties (the employer and employee) are at liberty to enter into any other arrangement that will facilitate the payments.
21. In the instant case, I understand the Respondent to be saying that the flat figure of Kshs 30,000.00 per month that the Claimant is demanding is meant to cover casual employees who are not on regular pay. That such payments force the Respondent to apply its resources to settle trade union dues for employees it cannot recover the amounts from.
22. This grievance raises valid concerns. It brings to the fore the question whether an employer can be compelled to remit to a trade union money which it has not collected from employees who are members of the trade union. Whilst the Claimant contends that the Respondent had agreed to such arrangement, it remains to be confirmed if such agreement is enforceable. The court will only express itself conclusively on the matter after full trial.
23. For the moment and in view of the fact that the law contemplates that the employer remits dues that have been recovered from employees' salaries, I think that it is only fair that the continued remittance of the impugned amount of Kshs 30,000.00 be stopped until the matter is heard and determined.
24. At the same time, the Respondent is not entitled to unilaterally recover the sum of Kshs 1,680,000.00 that was allegedly erroneously paid to the Claimant without the benefit of a court order. As a consequence, the Respondent is directed to desist from this endeavor until the matter is determined through full trial.
25. The net effect is that pending the full trial of the case, the Respondent shall continue to remit to the Claimant trade union dues and agency fees from employees who are in its regular employment. However, for employees who are serving on casual basis, they are at liberty to remit their trade union dues directly to the Claimant.
26. The costs of the applications shall abide the outcome of the suit.



Summary of the Determination

27. After considering the two applications the court issues the following orders:-

- a. The Respondent is allowed not to remit to the Claimant the monthly sum of Kshs 30,000.00 on account of its casual employees who are members of the Claimant until this action is heard and determined.
- b. However, the Respondent is to continue remitting to the Claimant trade union dues and agency fees from employees who are in its (the Respondent's) regular employment and who are either members of the Claimant or are beneficiaries of the CBAs concluded between the parties.
- c. The Respondent is forbidden from making any deductions from the amounts in paragraph b) above purportedly in recovery of the purported erroneous payments to the Claimant totaling Kshs 1,680,000.00 until this action is heard and determined on the merits.
- d. Until this cause is heard and determined on the merits, the Claimant should make arrangements with its members who are in casual employment with the Respondent for them to make direct payment of trade union dues to it in terms of section 52 of the Labour Relations Act.
- e. The costs of the two applications shall abide the outcome of the suit.

DATED, SIGNED AND DELIVERED ON THE 14TH DAY OF MARCH, 2024

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Claimant

.....for the Respondent

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M. MANANI

