



Kenya Commercial Food and Allied Workers Union v London Distillers (K) Ltd; Central Organization of Trade Unions (Interested Party) (Cause 102 of 2020) [2024] KEELRC 810 (KLR) (12 April 2024) (Judgment)

Neutral citation: [2024] KEELRC 810 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 102 OF 2020
MA ONYANGO, J
APRIL 12, 2024**

**BETWEEN
KENYA COMMERCIAL FOOD AND ALLIED WORKERS UNION CLAIMANT
AND
LONDON DISTILLERS (K) LTD RESPONDENT
AND
CENTRAL ORGANIZATION OF TRADE UNIONS INTERESTED PARTY**

JUDGMENT

1. The Claimant is a trade union registered under the Labour Relations Act to undertake trade union activities in the sectors set out in the membership clause of its constitution.
2. The Respondent is a limited liability Company incorporated in Kenya and operates a distillery for wines and spirits.
3. The Claimant has members among the Respondent’s employees and the Claimant and Respondent have a valid recognition agreement dated 6th March 1996. The parties have negotiated several collective bargaining agreements (CBA’s), the last one having come into force on 1st May, 2015. Since then the parties have not negotiated any agreement due to disagreements between them, one of which gave rise to the instant dispute.
4. It is the Claimant’s case that pursuant to Section 48 of the Labour Relations Act the Cabinet Secretary, Ministry of Labour issued an order for check off of union dues in favour of the Claimant by Gazette Notice, authorising deduction and remittance of Union dues from the employees of the Respondent who are members of the Claimant. The gazette notice specified the details for deduction of both union



- and Central Organization of Trade Union (COTU) Kenya dues, specifying the bank accounts to which the deducted union dues should be sent.
5. It is the Claimants case that on 22nd January, 2020, the Respondent, without any valid or lawful reason, threatened to stop deduction and remittance of union dues. That on 23rd January, 2020, the Claimant asked the Respondent to comply with 48 of the Labour Relations Act, 2007. That the letter dated 25th January, 2020 from the Interested Party on the same subject was also ignored by the Respondent.
 6. The Respondent, in complete defiance of caution and advice of the Claimant and the Central Organization of Trade Unions (Kenya), stopped deduction and remittance of union dues from the month of January, 2020 as can be seen from a sample of January, 2020 payslips in the Claimant's bundle.
 7. The Claimant avers that this is not the only anti union activity so far exhibited by the Respondent. That on 22nd June, 2017 the Respondent had threatened to revoke the Recognition Agreement between it and the Claimant as well as another Recognition Agreement between the Respondent's sister company and the Claimant all in a bid to scuttle the review of the collective bargaining which were then ongoing and which have since stalled and are now pending determination before this court.
 8. The Claimant avers that the Respondent also filed a Constitutional Petition N0. 326 of 2019 seeking to sever its relationship with the Claimant and to stay all proceedings between it and the Claimant as is evident from the documents in the Claimant's bundle filed in Court.
 9. It is the Claimant's averment that employees of Galot Estate, Kiambu, a sister company to the Respondent who declined to withdraw their union membership and who did not pledge their allegiance to the chairman of the Respondent had their employment terminated and were evicted from company housing, all in complete defiance of the orders of this court as is evident from the documents filed by the Claimant.
 10. The Claimant avers that the Respondent has steadily escalated their anti-union activities beyond measure and the Claimant was afraid that the employees may no longer observe industrial peace should the unlawful anti-union activities continue.
 11. The Claimant averred that unless the court intervened and granted the prayers sought by the Claimant, the Respondents employees would continue suffering from anti-union and unlawful activities and the flagrant disobedience of the laws of Kenya. That it is only upon grant of the prayers sought that the Respondent's employees would be cushioned and protected from anti-union and unlawful activities of the Respondent.
 12. The Claimant prayed for the following remedies in its Memorandum of Claim dated 19/2/2020:
 - i. Do declare that the Respondents action through their letter dated 22nd January, 202 is unlawful.
 - ii. Do order the Respondent to pay January, 2020 union dues of Kenya Shillings one hundred and sixty two thousand six hundred and eighty nine (Kshs. 162,689) and any other outstanding and unremitted union dues together with accrued interest at court rates from their own funds.
 - iii. Do declare that the Respondent herein failed to comply with section 19(4), (5) & (6) of the Employment Act, 2007 and unlawfully failed to remit union dues under Section 19(1) (f) of the said Act.



- iv. Do find that the Respondent's failure to comply with the Order or Notice issued under part (vi) of the Labour Relations Act, 2007 contravened this section thus committing an offence as prescribed under section 50(10) of the Act under reference.
 - v. Do convict the employer herein for committing an offence for failing to act under section 19(4), (5) & (6) of the Employment Act, 2007 and equally find them liable to a fine of Kenya Shillings One Hundred Thousand (Kshs. 100,000) and liable to imprisonment for a term of two years.
13. The Claimant simultaneously with the Memorandum of Claim filed an application by way of Notice of Motion seeking the following orders:
- i. That this Application be certified urgent and be heard *ex parte* in the first instance, service thereof being dispensed with at the earliest opportunity.
 - ii. That pending hearing and determination of this matter, this Honourable Court do and hereby orders the Respondent to deduct and remit union dues from their employees who are union members for the month of February, 2020 and to continue doing so on monthly basis.
 - iii. That pending hearing and determination of this matter, this Honourable Court do and hereby restrains the Respondent from victimizing, coercing, terminating or disciplining union members whose payslips are now before this court as proof of deduction and discontinuation and on account of their union membership.
 - iv. That this Honourable Court be pleased to set down this matter for hearing on priority basis.
 - v. That costs of this application be in the cause.
14. Upon hearing the Claimant's application which was filed under certificate, the court issued *ex parte* orders as follows:
- i. That Respondent herein, vide their letter dated 22nd January, 2020, indicated their unwillingness to deduct and remit union dues to the claimant/Applicant and to the central Organization of Trade Unions (Kenya) and has since stopped the said deduction and remittance of union dues all against section 48(2) & (3) of the Labour Relations Act, 2007 and section 19(1)(f), (g) & (i) of the Employment Act, 2007.
 - ii. That 407 union members from whom they have been deducting and remitting their union dues have not revoked their union membership.
 - iii. That there is no order from the minister currently responsible for Labour to revoke the Gazette Notice authorizing deduction and remittance of union dues or suspending deduction and remittance of union dues.
 - iv. That the Respondent's action is unlawful and amounts to flagrant disobedience of Section 48 of the Labour Relations Act, 2007 and Section 19(1) (f), (g) and (i) of the Employment Act, 2007.
 - v. That the Respondent's action is one among many attempts to interfere with the employees' Right of Freedom of Association and exhibits a high level of anti-union attitude and is a clear recipe for Industrial Chaos.
 - vi. That the Respondent's action is driven by the unlawful intention to deny the claimant/Applicant its much needed funds and to interfere with its lawful functions.



15. The Respondent filed a statement of Response dated 22nd April 2021 in which it admits that it signed an agreement relative to recognition and negotiation procedure with the Claimant. It states that pursuant to the agreement it consistently pays trade union dues and COTU fees on behalf of all its employees who are members of the Claimant.
16. The Respondent states that although it has unionizable employees who are eligible to join the membership of the Claimant, the personal and domestic employees of the Respondent's directors are not eligible to become members of the Claimant.
17. The Respondent avers that the Claimant has engaged in a series of unfair Labour practices which continue to affect the Respondent's financial services and operations, some of which it sets out as hereunder:
 - a. The Claimant engages in unfair labour relations by making aimed at satisfying the personal interests of the Union vis-à-vis the interests of the employees involved and the Respondent.
 - b. The Claimant directly collects trade union dues from the employees of the Respondent.
 - c. The Claimant files numerous suits in its own name against the Respondent on behalf of persons who are not employees of the Respondent as listed in paragraph 15 of this Statement of response.
 - d. The Claimant has committed illegalities by seeking to recruit the personal employees and workers employed by the Directors of the Respondent at their private residences as its members and unjustifiably demanding payment of union dues on their behalf.
 - e. The Claimant has extended the disagreement between it and the Respondent to the Directors of the Respondent and has on several occasions been storming into the personal and private residence/dwelling places of the Directors of the Respondent on the alleged claims of recruiting trade union members.
 - f. The Claimant has directly collected monies from the personal and domestic employees of the Directors of the Respondent in the absence of a Recognition agreement on behalf of the domestic workers between the Claimant and the Respondent, a factor that constitutes not only gross violation of the law but touches on the privacy and dignity of the said Directors, the operations of the Respondent and the concerned employees.
 - g. The Claimant calls for illegal strikes and go slows which unjustifiably halts the operations of the Respondent.
 - h. As a result of the devious acts of the Claimant, the Respondent lodged an application under Section 54 (5) of the Labour Relations Act seeking to de-recognize the Claimant and the same is awaiting hearing and determination, Nevertheless, the Respondent has expressed willingness to continue engagement in strict adherence to the law with any other Trade Union.
18. The Respondent denies that it engages in anti-union activities as pleaded in paragraph 11 of the Statement of claim. The Respondent avers that it has a right to apply for the termination of the Recognition agreement between the Respondent and the Claimant in compliance with the due process spelt out under the law and in particular Section 54(5) of the Labour Relations Act. Thus, this Court does not have jurisdiction to hear and determine issues of termination of a recognition agreement which is pending before the National Labour Board.



19. In further response to paragraph II of the Statement of Claim, the Respondent states that the Claimant mala fides makes reference to 'another sister Company' who is not a party to these proceedings.
20. The Respondent further avers that the issues on review/bargaining of the Collective Bargaining Agreement are sub judice in Nairobi ELRC 912 of 2018 and it is only proper and just that the Claimant makes submissions/assertions in the relevant Cause which is pending determination.
21. The Respondent states that it has a right to seek redress from any court hence its filing of Constitutional Petition against the Claimant to safeguard its rights and the rights of its employees by extension.
22. The Respondent states that there is no legal person known as Galot Estate as insinuated by the Claimant in the Claim. It further states that the domestic and personal employees of its directors declined to vacate staff quarters necessitating the filing of a suit to bar them from accessing, entering into, being in occupation of the staff Quarters at the residential premises of the directors of the Respondent in Thika ELC 149 of 2019. It further states that there is no recognition agreement between the said directors and the Claimant.
23. The Respondent states that the instant suit is sub judice to existing suits between the parties namely:
 - a. Nairobi El-RC Cause No. 192 of 2016: Kenya Union of Commercial Food and Allied Workers -versus- London Distillers (K) Limited
 - b. Nairobi El-RC Cause No. 913 of 2018: KUCFAW -versus- London Distillers (K) Limited
 - c. Nairobi El-RC Cause No. 912 of 2018: KUCFAW -versus- London Distillers Limited
 - d. Nairobi El-RC Cause No. 127 of 2018: KUCFAW -versus- Condon Distillers (K) Limited
 - e. Nairobi El-RC Cause No. 1362 of 2019: KIJCFAW -versus- Galot Estate
 - f. Nairobi El-RC Cause No. 1639 of 2016: KUCFAW -versus- London Distillers (K) Limited
 - g. Nairobi ELRC Cause No. 120 of 2019: KUCFAW -versus- London Distillers (K) Limited & others
 - h. Nairobi ELRC Cause No. 161 of 2019: KUCFAW -versus- London Distillers (K) Limited
 - i. Nairobi El-RC Cause No. 163 of 2019: KUCFAW -versus- London Distillers (K) Limited
24. On the whole, the Respondent asserts that the Claimant's Cause is bare, raises no reasonable cause of action, is incompetent, frivolous and vexatious; and the Claimant is filing multiple suits in total abuse of court process. It prays that the suit be dismissed with costs.
25. Following the resolution of the application filed by both parties by the court, the parties were directed to dispose of the instant suit by way of pleadings, sworn witness affidavits and written submissions. Both parties complied.
26. The Claimant filed witness affidavit of Rebecca Muthiki, its Athi River Branch Secretary, and submissions dated 4th March 2022. The Respondent filed sworn witness statement and of Mohan Galot who describes himself as the subscriber, founder, Governing Director, Chairman and Principal Shareholder of the Respondent. The statement is dated 28th October 2021. It also filed a list of Documents of even date and submissions dated 3rd November, 2021.



Analysis and Determination

27. I have considered the pleadings, sworn witness affidavits/statements and the submissions by both parties. It is common ground that the genesis of the dispute herein was the letter dated 22nd January, 2020 in which the Respondent addressed the Claimant as follows:-

22nd January, 2020

Secretary General

Kenya Union of Commercial Food and Allied Workers

Comfood Building, Kilome Road

Box 46818-00100

Nairobi

Dear Sirs

Re: Deduction Of Union Membership Fee

- Galot Estate, Kiambu

- London Distillers (K) Limited

We refer to the monthly deductions expected from us towards the Union and Cotu dues.

You have forcefully, without seeking concurrence with us and in the absence of any enforceable Agreement with us, illegally proceeded to recruit all the workers of Galot Estate, Kiambu and all workers have been paying Union membership fees directly to you and COTU, which step is calculated to intimidate and interfere with our operations.

In view of the above illegal labour practices, similarly, from January 2020 you will have to arrange with your members working for London Distillers (K) Limited to pay their contributions directly to you and COTU.

Best wishes

Mohan Galto

Owner: Galot Estate, Kiambu

CHAIRMAN: London Distillers (K) Limited

Cc: Gichina, Macharia, Matotse & Co. Advocates

Tiego & Co. Advocates

Maumo & Co. Advocates

The Chief Shop Steward – LDK, Athi river factory

COTU

28. Both the Claimant and Interested Party responded to the letter. In the reply dated 23rd January, 2020 the Claimant's Secretary General wrote as follows-

The Chairman 23rd January, 2020

London Distillers (K) Ltd P.O. Box 57387-00200 NAIROBI



Dear Sir

Re: Union Dues Deduction

We acknowledge receipt of your letter Ref. LDK/MG/027/20 of 22nd January, 2020 on deduction and remittance of union dues.

Kindly revisit Section 48 of the Labour Relations Act, 2007 and be lawfully guided on the above subject. As a law abiding Union, we shall approach the Court should you fail to deduct and to remit union dues. The employees serving at Galot Estate-Kiambu have been subjected to some of the worst forms of unfair labour practice, some of who have been denied access to their jobs and houses all against the Court Order issued on 26th February, 2018 and dated 1st March, 2019. Copy enclosed. Judicial process may be slow but time will tell whether or not you are above the law of Kenya with the capacity to defy Orders of our Courts and to act with impunity.

Finally, we feel you have gone overboard which have nothing to do with normal Industrial Relations Practices and that we are capable of handling the circumstances in the manner you choose to fashion it.

Yours faithfully,

Signed

Boniface M. Kavuvi

Secretary General

29. The Interested Party also wrote as follows:

25th January, 2020

The Chairman

London Distillers (K) Ltd

O. Box 57387-00200

Nairobi

Dear Sir,

Re: - Union Dues Deduction

We are in receipt of a copy your letter Ref. LDK/MG/027/20 of 22nd January, 2020 on deductions and remittances of union dues as well as the response from Kenya Union of Commercial Food and Allied Workers an affiliate of COTU (K) referenced 1.14/2020/2 dated 23rd January, 2020.

Please be advised that we fully support the sentiments and decisions of KUCFAW. We advise that you rescind your decisions and uphold proper Industrial practices failure to which we will support the union with the relevant machinery.

Yours faithfully,

signed

Dr. Francis Atwoli. NOM (DZA), EBS, MBS Secretary General

cc



1. General Secretary, Kenya Union of Commercial, Food & Allied Workers, Comfood Building, NAIROBI
2. Executive Director, Federation of Kenya Employers waajiri House, NAIROBI
3. Chief Industrial Relations Officer, Ministry of Labour and Social Protection, NAIROBI

30. It would appear that the hostilities between the parties commenced earlier, when the Respondent wrote to the National Labour Board through its advocate letter dated 22nd June, 2017 threatening to terminate the recognition agreement as follows:-

LDK/MG/068/18

29th January, 2018

Kenya Union of Commercial Food and Allied Workers

Box 46313-00100

Nairobi

Attn. Charles Egesa

Dear Sir,

Re: Review of C.B.A.

The above and your letter ref. 174/29018/01 dated 19th January 2018 refer: -

I have now come back from overseas and the following issues in my view are yet to be discussed and resolved: -

1. London Distillers (K) Limited (LDK) employees went on illegal strike on 10th July 2017 and 22nd August 2017 and no attempts have been made by the union to assure the company that no such action will again take place going forward.
2. You have illegally and in breach of CBA agreement, enrolled employees of Galot Estate, who are my personal employees for whom I have neither deducted nor paid Union fees.
3. My advocate has given notice of intention to terminate the Recognition Agreement between LDK & KUCFAW. See attached copies of the letters dated 19th June 2017 and 22nd June 2017 respectively. This matter is still pending with the National Labour Board.
4. Lastly, you have failed to cooperate with Manpower Services Limited, our consultants for the job evaluation exercise. The job evaluation exercise will essentially form the basis of our CBA negotiations.

LDK/MG/068/18

29th January, 2018

In view of the above, there is nothing to discuss at the moment until the issues are conclusively resolved.

Regards



Signed
Mohan Galot
Chairman

31. The Respondent thereafter refused to negotiate the collective bargaining agreement with both the Respondent and Bounty Limited, a sister company to the Respondent which also has a recognition agreement and CBA with the Claimant union. The letter from the Respondent to the National Labour Board is reproduced below.

Magut & Sang Associates
National Labour Board
National Social Security House
Bishops Road, 4th Floor
Nairobi

Dear sir,

Re: Notice To Terminate The Recognition Agreements Between:

1. London Distillers (K) Limited and Kenya Union of Commercial Food and Allied Workers
2. Bounty Limited and Kenya union of Commercial Food and Allied Workers.

We refer to the above subject matter in which we act for London Distillers (K) Limited and Bounty Limited (hereinafter referred as “our Clients”)

pursuant to Section 54(5) of the Labour Relations Act, our clients wish to make an application for the termination/revocation/cancellation of the recognition agreements between them and Kenya Union of Commercial and Allied Workers (hereinafter referred to “the Union”)

this has been provoked by the Union’s continuous engagement in activities that continue to and undermine the existing relationships.

In particular, our clients are displeased with the Union’s engagement, incitement and recruitment of employees of Galot Estate, a totally different entity not envisaged under the existing Recognition Agreement, and which is not within its mandate. For clarification, Galot Estate is the personal property of the Chairman of our clients, and employees domestic workers, personal drivers, dog handler and agricultural gardeners/general workers, not eligible for membership in the Union, as they are not employees of our clients.

The Union’s actions have been detrimental and undermining to the existing relationships. Further due to the Union’s actions, our clients have lost trust and confidence in it.

In a nutshell, our clients apply to your offices to set in motion the requisite structure and/or process for termination of the recognition agreements signed between them and the Union.

Yours faithfully,

For: Magut & Sang Associates

Signed



B.K. Sang (Advocate)

Cc: clients

32. As is evident from the pleadings, at the time the instant suit was filed the parties had a total of ten (10) other suits pending between them.
33. From the pleadings and submissions, the issues arising for determination are the following: -
 - i. Whether this suit is sub judice
 - ii. Whether the Respondent had valid reason to stop deduction and remittance of our dues.
 - iii. Whether the Claimant is entitled to the orders sought

i. Sub-judice

34. This issue was the subject of the ruling of this court delivered on 9th April 2021 in respect of the Respondent's application dated 28th February, 2020. In the application the Respondent prayed for dismissal of this suit on grounds that there is a multiplicity of suits between the parties.
35. After hearing the parties on the application, the court held as follows:

“It is the submission of the Respondent that the claimant has engaged in deaf and uncontroverted abuse of Court process by filing multiple proceedings between the same parties on the similar question of payment of union dues and forceful recognition of domestic staff of the directors of the Respondent... All the suits cited by the Respondent, some of which are filed by the Respondent itself, are on different subject matters. None of those matters are before this court for determination and therefore the court cannot make a determination on a matter that has not been pleaded in the application. Parties are bound by their pleadings and are not allowed to submit or litigate any matter outside their pleadings.

Besides the foregoing, as already held above, the suit herein is not sub judice.”

36. This issue was conclusively determined in the ruling.

ii. Stoppage of deduction and remittance of our dues

37. The second issue for determination is whether the Respondent had valid reason to terminate deduction and remittance of union dues.
38. This issue was also conclusively determined in the same ruling of the court delivered on 9th April 2021 where the court held that:

“Conclusion

1. Having found that the respondent has not proved that the claim herein is sub judice, its application dated 28th February 2020 is dismissed.
2. The claimant having proved that the Respondent has declined to deduct and remit union dues in violation of the provisions of Section 48 of the Labour Relations Act, I make orders as follows: -
 - i. That pending hearing and determination of this matter, this Court do and hereby orders the Respondent to deduct and remit



union dues from their employees who are union members for the month of February 2020 and to continue doing so on monthly basis.

- ii. That pending hearing and determination of this matter, this Court do and hereby restrains the Respondent from victimizing, coercing, terminating or disciplining union members whose payslips are now before this court as pro of of deduction and discontinuation there of on account of their union membership.
- (iii) Is the Client entitled to the prayers in its claim

- 39. During the pendency of the hearing of this suit the Respondent resumed the deduction and remittance of union dues as is evident from the documents filed with its defence.
- 40. It is further evident from the Claimant's Supplementary Submissions dated 4th March, 2022 that the Respondent's letter seeking to revoke the recognition agreement between it and the Claimant was declined by the National Labour Board in the letter from the Board dated 16th December, 2021.
- 41. It is thus evident that the two issues of union dues and termination of recognition agreement have been fully resolved. The issue was also subject of the ruling of this court delivered on the 9th April, 2021. The said orders are hereby confirmed.
- 42. In the end, the court orders that the Respondent continues to deduct and recruit union dues as provided by law. The court further orders the Respondent to refrain from threats of terminating recognition agreement unless the same is done in compliance with the provisions of the said recognition agreement, Article 41 of the Constitution and section 59 of the Labour Relation Act.
- 43. The Respondent shall bear the Claimants cost which the court assesses at Ksh. 100,000, taking into account the pleadings, court attendance, filing and service fees and all reasonable costs and disbursements attendant to the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 12TH DAY of APRIL 2024

MAUREEN ONYANGO

JUDGE

