



**Kenya Private Universities Workers Union v Management University of Africa
(Cause E6502 of 2020) [2024] KEELRC 1433 (KLR) (14 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1433 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E6502 OF 2020**

**J RIKA, J
JUNE 14, 2024**

**BETWEEN
KENYA PRIVATE UNIVERSITIES WORKERS UNION CLAIMANT
AND
MANAGEMENT UNIVERSITY OF AFRICA RESPONDENT**

JUDGMENT

1. The Claimant filed its Statement of Claim, on 30th November 2020.
2. It avers that, its attempt to access the Respondent’s premises for purposes of recruiting members, was thwarted by the Respondent.
3. The Claimant sought the intervention of the Labour Office and Cotu-k. The Conciliator appointed by the Ministry of Labour invited the Respondent for conciliation meeting, which the Respondent ignored. Cotu-k wrote to the Respondent to allow the Claimant access to its premises to recruit members, but the Respondent declined access.
4. On 24th February 2020, the Claimant wrote directly to the Respondent to be allowed access, to recruit and educate members on the benefits of trade unionism. The Respondent wrote back, seeking time to evaluate the request. There was no feedback.
5. The Claimant nonetheless accessed the premises without invitation and managed to recruit 15 members. They signed check-off forms.
6. The Claimant states that its members in other Institutions of higher learning, had been sacked on account of their membership of the Claimant. It therefore seeks protection of the Court, to avoid victimisation of Employees on account of their association with the Claimant.
7. The Claimant prays for: -



- a. The Respondent be ordered to grant the Claimant access to its premises, to reach out to members and potential members.
 - b. The Respondent be ordered to deduct and remit trade union dues in accordance with Section 48 of the [Labour Relations Act](#), 2007.
 - c. The Respondent and/or other persons acting for the Respondent, are restrained from victimizing members on account of their association with the Claimant.
 - d. The Respondent to sign recognition agreement with the Claimant to pave way for collective bargaining.
 - e. Any other suitable relief.
 - f. Costs.
8. The Respondent filed its Statement of Response, dated 18th October 2023. Its position is that it has always granted the Claimant access to its premises.
 9. It denies that it refused to attend conciliation meetings. It has always been ready to attend, and has participated in conciliation meetings.
 10. On deduction and remittance of trade union dues, the Respondent states that the Claimant has not met the requirements of the law to enable the Respondent act under Section 48 of the [Labour Relations Act](#).
 11. The Employees against whom deduction and remittance of trade union dues is sought, have notified the Respondent in writing, of their resignation from the Claimant.
 12. Geoffrey Magani and Thomas Ngui, whose names were included in the check-off lists left employment. Elizabeth Adoyo and Miriam Jemutai were never employed by the Respondent. Samuel Gitau was an intern, not an Employee of the Respondent. 10 other Employees declined to authorize deduction of trade union dues from their salaries, as some had resigned, while others denied that they had ever joined the Claimant.
 13. The Respondent prays the Court to dismiss the Claim.
 14. Parties were directed by the Court to file and exchange written submissions on 13th October 2023. The Court directed that the Claim is considered and determined on the basis of these submissions, documents and affidavits on record. The Parties confirmed filing and exchange of submissions on 30th November 2023.

The Court Finds

15. In [Kenya Private Universities Workers Union v. Mt. Kenya University, Cause Number 117 of 2020](#), the Claimant herein sought similar orders for access to Mt. Kenya University, for purposes of educating and recruiting members.
16. The Court declined the orders, finding that there was no legal obligation imposed on an Employer, to invite a Trade Union to its business premises, to educate and recruit members.
17. It was the view of the Court that all that an Employer is required to do, is keep its gate open to the Union. The only concern of the Employer after it has opened its gate, is that the Trade Union shall not interfere with learning in the course of its recruitment of members within the University.



18. It was also the view of the Court that the Trade Union has other avenues of recruiting members, beyond physically going into Universities. It can mobilize members by setting camps within the environs of the Universities, or even meeting members and potential members through virtual platforms. It is not worth the trouble, filing proceedings which take time and other resources before conclusion, seeking orders of the Court to access workplaces, for recruitment of members.
19. That said, Courts do not issue orders in vain. What value would an order granting the Claimant access to the Respondent University add, while the Claimant states it was able to access the University without invitation, and recruit members? It is open to the Claimant to visit the Respondent University at any time, subject only to not interfering with the Respondent's academic programmes. The Claimant does not need the aid of the Court, in accessing the Respondent Institution, and recruiting members.
20. On compliance under Section 48, the Claimant has exhibited an order made with effect from 14th November 2014, requiring Employers of Employees represented by the Claimant Union, to deduct trade union dues and remit to the Claimant and to COTU-K. There is no reason therefore not to deduct and remit trade union dues, with respect to undisputed members of the Claimant.
21. There are persons whose membership is disputed, and whose salaries, cannot or should therefore not be subjected to deduction of trade union dues. They include: Thomas Ngui who resigned from the Respondent on 12th May 2022; Sam Gitau who resigned on 11th September 2020; Ruth Kiilu who denied membership in her letter dated 26th July 2022; Tony Kamuti who wrote on 19th July 2022 to the Respondent's Vice-Chancellor, declining deduction of his salary on the ground that he was tricked by the Claimant to sign the check-off form; and, Paul Machoka, Harriet Adhiambo, Alexander Muteti, Esther Wainaina, Peter Kithae, Patricia Chemutai and Bernard Rutto, all who wrote letters, rescinding their membership of the Claimant.
22. The Respondent should deduct and remit trade union dues to the Claimant, with regard to other persons who have indicated their membership of the Claimant, through the check-off lists. This obligation is imposed by the Ministerial order gazetted back in 2014.
23. Whereas Section 48 [3] mandates an Employer in respect of whom the Minister has issued an order for deduction and remittance of trade union dues, to effect the order within 30 days of its service upon the Employer by the Trade Union, Section 48 [6] bars the Employer from making deductions with respect to Employees who have notified the Employer in writing, that they have resigned from the Union.
24. On the order of execution of recognition agreement to pave way for collective bargaining, the Claimant has not satisfied Section 54 of the *Labour Relations Act*. It has not established how many Employees it has recruited from the Respondent, and whether the recruited Employees, make up a simple majority of the total unionisable workforce. The Claimant did not attempt to establish what percentage of Employees it has recruited, in particular considering that some who were claimed to have been recruited, have notified their Employer that they resigned from the Claimant. The prayer seeking an order for recognition is declined.
25. On the prayer for non-victimisation of Employees on account of their association with the Claimant, there is not a single Employee who was presented before the Court, complaining about victimisation. There is no affidavit or witness statement, of any Employee complaining about victimisation. Those who resigned from the Claimant, or from the Respondent, do not relate their respective decisions, to their association with the Claimant.



26. The Claimant's assertion that its members at other Institutions of Higher Learning were victimized on account of their association with the Claimant, and that it apprehends its members working for the Respondent will likewise be victimized, is farfetched. The Claimant initiated other Claims, with respect to those other grievances, and what happened in those instances, is irrelevant to the Claim filed herein. The Institutions mentioned by the Claimant do not share a Management. They do not act in common, in dealing with the Claimant. They are separate legal entities. The Claimant deals with them individually. The Claimant ought not to have prosecuted its Claim through analogy. It ought instead to have presented evidence, and argued the facts and the law, specific to the Claim before the Court.

It Is Ordered

- a. The Respondent shall deduct and remit trade union dues to the Claimant, with respect to members who have not resigned from the Claimant Union.
- b. Other prayers are declined.
- c. No order on the costs.

Dated, signed and released to the Parties electronically, at Nairobi, under Practice Direction 6[2] of the Electronic Case Management Practice Directions, 2020, this 14th day of June 2024.

James Rika

Judge

