



**Meter and Standard Gauge Railways Workers and Pensioners Union (K) v  
Kenya Railways Corporation & another (Employment and Labour Relations  
Cause E1041 of 2021) [2024] KEELRC 1541 (KLR) (13 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1541 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E1041 OF 2021**

**MN NDUMA, J**

**JUNE 13, 2024**

**BETWEEN**

**METER AND STANDARD GAUGE RAILWAYS WORKERS AND PENSIONERS  
UNION (K) ..... CLAIMANT**

**AND**

**KENYA RAILWAYS CORPORATION ..... 1<sup>ST</sup> RESPONDENT**

**AFRICA STAR COMPANY LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The suit was filed by claimant vide a memorandum of claim on 14/12/2021 in which the claimant seeks the following reliefs:-
  1. That the 1<sup>st</sup> respondent herein be and is hereby permanently prohibited from un-procedurally reducing the trade union dues deducted from the respective salaries of the applicant members herein.
  2. That the respondents be and are hereby directed to continue deducting and remitting trade union dues on account of all the employees whose resignation letters and check-off forms shall henceforth be submitted by the applicant to the respondents herein.
  3. That the respondents be and are hereby directed to remit from their own coffers all the areas of the trade union dues as was supposed to have been deducted and remitted by them on account of the employees who had instructed the said respondents to deduct and remit the said dues to the applicant/claimant trade union herein. And or.
  4. That the honourable court addresses itself to the culpability of the respondents herein and proceed to impose a fine and or sentence of imprisonment and or both fine and imprisonment



in strict accordance to provisions of the law in the Employment Act 2007 in the section 19(4), (5) and (6).

5. That costs of the claim be provided for
2. The 2<sup>nd</sup> respondent filed a reply to the memorandum of claim on 17/5/2023 and a notice of preliminary objection dated 10/9/2022. The objection is:-

“That the claimant lacks *locus standi* to institute and prosecute the instant suit on account of the fact that there is no written recognition agreement between the claimant and the 2<sup>nd</sup> respondent as required under section 54(3) of the Labour Relations Act, 2007.”
3. The court gave directions that the preliminary objection shall be dealt with together with the merits of the case in the final judgment of the court. The interlocutory application was dropped by the claimant/ applicant.
4. The issues in dispute in this matter are set out on the face of the memorandum of claim as follows:
  1. The refusal by the 1<sup>st</sup> and 2<sup>nd</sup> respondents to deduct and remit the trade union dues of 930, employees of the 1<sup>st</sup> respondent and 230 employees of the 2<sup>nd</sup> respondent who have voluntarily signed the applicant’s check off forms.
  2. The un-procedural yet consistent reduction of the deducted trade union dues by both respondents without proffering any justification for the said unprocedural reductions.
  3. The refusal by the 1<sup>st</sup> respondent to recognize the applicant trade union despite the said applicant being in strict compliance with the requirements of section 54 of the Labour Relations Act 2007 and the section 19 of the Employment Act 2007.
  4. The alleged detention camps, servitude, horrendous and dehumanizing conditions that Kenyan workers have been subjected to in the 2<sup>nd</sup> respondent’s work premises and hostels constructed by the 2<sup>nd</sup> respondent in their respective premises with the said Kenyan workers therein, detained, some for more than twenty months, isolated from their families and with no freedom to socialize

### **Facts of the Case**

5. The claimant opted not to call any witness and relied on the memorandum of claim, the verifying affidavit and the bundle of documents attached to the memorandum of claim. The secretary general of the claimant union deposed the facts set out in the verifying affidavit which may be summarized as follows:
6. That the claimant union recruited 930 employees of the 1<sup>st</sup> respondent and 230 employees of the 2<sup>nd</sup> respondent as its members. That the said employees voluntarily signed up as members of the union and agreed to associate themselves with the lawful activities of the union. The check off forms in respect of the said employees are attached to the affidavit and memorandum of claim.
7. Mr. Munayi Opondo, further deposes that upon submitting the check off forms to the respondents, the two did not commence to deduct and to remit the said trade union dues as is obliged of them in law and gave flimsy reasons to justify that noncompliance.
8. The 1<sup>st</sup> respondent stated that the 930 members said to have been recruited as union members were in the managerial bracket and so did not qualify to be union members.



9. The 1<sup>st</sup> respondent has refused to sign the draft recognition agreement submitted to them and to deduct union dues lawfully payable to the designated union account.
10. The 2<sup>nd</sup> respondent on the other hand instead of complying by commencing deductions and signing recognition forms made their own forms and demanded from the recruited union members to append their signatures in the new forms to confirm that indeed they had become members of the claimant union freely and voluntarily. That the respondents started a campaign of threats and intimidation of employees who had joined the union. The respondents for example reduced the salaries of their employees under the guise of Covid 19 pandemic.
11. The deponent states that issues for determination in this matter are issues of law under section 48 and 54 of *Labour Relations Act* and section 19 of the *Employment Act, 2007*.
12. That the 2<sup>nd</sup> respondent has also subjected its workers to horrendous work environment in conditions that are servitude in nature in its premises/hostels erected by the 2<sup>nd</sup> respondent under the guise of accommodation. That the said workers have no freedom of movement or to socialize and or to meet their families and are kept under unpalatable, forced labour camps that mimic prisons. That the court should direct the labour office to investigate these matters.
13. That the leadership of trade union movement in this county has attempted overtime to impose another union on the workers contrary to their will. That there has never been a valid collective bargaining agreement in the rail section for the past 15 years and still counting.
14. That there are many matters of unlawful dismissal pending before this court including cause no. 1647 of 2014; 120 of 2016 and 576 of 2018 among others this being evidence of unlawful conduct consistently employed by the 2<sup>nd</sup> respondent on the unionisable workers.
15. That the reliefs sought be granted.

## **Defence**

16. Respondent called RW1, Nicholas Opanda who testified that he was an employee of the 1<sup>st</sup> respondent and adopted a witness statement dated 21/9/2022 as his evidence in chief. He also produced exhibits '1' and '2' dated 21/9/2022. He said he was a senior Human Resource Officer and a member of the institute of human resource (K).
17. RW1 said that 1<sup>st</sup> respondent has a recognition agreement with Rift Valley workers union which has 145 of the employees of the respondent as its members. RW1 said it has no relationship with the claimant union. RW1 said the 1<sup>st</sup> respondent had deducted and remitted union dues to Rift Valley Railway Workers Union in the monthly sum of Kshs.500/= in respect of all its employees who are members of Rift Valley Railways Workers Union.
18. RW1 said none of its employees have authorized the 1<sup>st</sup> respondent to deduct union dues and remit to the claimant. That the check off forms annexed to the memorandum of claim herein are forms from Rift Valley Workers Union (IC) and not for the claimant union.
19. RW1 denied that the 1<sup>st</sup> respondent had violated the rights and fundamental freedoms of its employees as alleged by the claimant or at all.
20. RW1 states that the claimant union has not proved that it is entitled to recognition by the 1<sup>st</sup> respondent.



21. The 2<sup>nd</sup> respondent called RW2 Mary Mwiwaki who adopted a witness statement dated 16/12/2022 as her evidence in chief. RW2 also produced exhibits '1' to '20' dated 15/12/2022 in support of 2<sup>nd</sup> respondent's case. RW2 stated that she is Deputy Human Resource Manager of the 2<sup>nd</sup> respondent. RW2 said the 2<sup>nd</sup> respondent is a separate legal entity from China Road and Bridge Corporation. That the 2<sup>nd</sup> respondent does not have unionisable employees who are members of the claimant and legal notice no. 52 dated 5/5/2014 does not apply to the claimant.
22. That employees of the 2<sup>nd</sup> respondent are members of Rift Valley Railway Workers Union and the number has been changing over the years due to the fluid nature of employment.
23. That the 2<sup>nd</sup> respondent has been making deductions and remitting union dues for all its unionisable employees to Rift Valley Railway Workers Union and not to the claimant union.
24. That none of the employee of the 2<sup>nd</sup> respondent have requested their salary to be deducted and union dues be remitted to the claimant union.
25. That the 2<sup>nd</sup> respondent has never denied any union entry to its premises to recruit members. That the list of names purported to be members of the claimant are members of Rift Valley Railway Workers Union to which the 2<sup>nd</sup> respondent has been remitting monthly union dues of Kshs.500 per member.
26. That the claimant has not proved that it has recruited a simple majority of the employees of the 2<sup>nd</sup> respondent because the forms it attached belong to Rift Valley Railway Workers Union.
27. That the 2<sup>nd</sup> respondent has not been engaged by the claimant to sign a recognition agreement as alleged or at all. That employees must grant express authority for any deductions of their salary which has not happened in this case.
28. That the suit lack merit and it be dismissed.

### **Determination**

29. The court has considered written submissions by the parties and the affidavit evidence by the claimant vis a vis the evidence adduced under oath by RW1 and RW2. The issues for determination are:-
  - a. Whether the claimant union has proved that it has recruited a simple majority of the employees of the 1<sup>st</sup> and 2<sup>nd</sup> respondents in terms of section 54 of *Labour Relations Act, 2007* to warrant the 1<sup>st</sup> and 2<sup>nd</sup> respondents to recognize the claimant as the union representing their unionisable employees?
  - b. Whether the claimant is entitled to receive union dues from stated employees of the first and 2<sup>nd</sup> respondent?
30. From the outset, it is clear, that the claimant bears the onus of proving its case in terms of section 48 and 54 of the *LRA* on a preponderance of evidence. The claimant herein did not adduce any oral testimony before court but relied on documentary evidence attached to the memorandum of claim and in particular the affidavit sworn to by the General Secretary of the claimant union, Mr. Munayi Opondo Isaac.
31. In the said affidavit, the claimant alleges that it had recruited 930 employees of the 1<sup>st</sup> respondent and 230 employees of the 2<sup>nd</sup> respondent as its members.



32. To prove these allegations, the claimant referred to check-off forms signed by employees of both respondents authorizing the 1<sup>st</sup> and 2<sup>nd</sup> respondents to deduct union dues from the salary of the said employees and remit to the claimant.
33. The court has carefully scrutinized the check off forms remitted via a letter dated 30/7/2018 by Mr. Munayi Isaac Opondo to the General Manager, Human Resources of Kenya, Railway Corporation and to the Human Resource Manager of Meter Gauge Railway. All the forms attached to the letter bear the letter head of Rift Valley Railways Workers Union (K) which is a rival union to the claimant union which is known as Meter and Standard Gauge Railways Workers and Pensioners Union (K).
34. Further check-off forms were forwarded to the 1<sup>st</sup> and 2<sup>nd</sup> respondents by Mr. Munayi Isaac Opondo via letter dated 16/8/2018. Again the check off forms bear the letter head of Rift Valley Railways Workers Union (K) a rival union to the claimant.
35. In short, the claimant did not present before court any check off forms which on the face of the forms indicate that the claimant union has recruited the employees listed therein as its members.
36. RW1 and RW2 adduced compelling evidence denying that the claimant union has submitted any check off forms to them indicating that any of their employees have joined the claimant union. The two witnesses adduced credible evidence that the 1<sup>st</sup> and 2<sup>nd</sup> respondent have recognition agreement with Rift Valley Railway Workers Union (K) which is a rival union to the claimant and that the two companies have for a long time been authorized by their unionisable employees to deduct monthly union dues of Ksh.500/= per employee and remitted the amount to Rift Valley Railways Workers Union (K).
37. The claimant did not adduce any evidence to rebut this credible and compelling evidence adduced by RW1 and RW2.
38. The facts of this case demonstrate that the suit by the claimant lack merit. The claimant has failed to prove on a balance of probability that it has recruited any employees of the 1<sup>st</sup> and 2<sup>nd</sup> respondents as its members to warrant the two companies to grant the claimant recognition in terms of section 54 of LRA and to warrant the two companies to deduct and remit union dues to the claimant in terms of section 48 of LRA.
39. The court is persuaded by the decision of this court in Kenya Shoe and Health Workers Union versus Crown Industries Ltd and another [2017] eKLR where the court held:-
  - “26. Logically, there can only be one recognition agreement in a single establishment at a time.
  27. It seems to me that if the claimant effectively seeks to dislodge the interested party from the recognition privilege it ought to have filed evidence of its current membership status. Having failed to do so and there being no invalidating reasons against the recognition agreement already in force, the court finds the claim for recognition unsupported and unsustainable.”
40. The present case suffers the same fate as the finding of the learned Judge in the Kenya Shoe case above. The present matter is even worse because the claimant did not enjoin Rift Valley Railway Workers Union (K), whose check-off forms it has purported to use to prove its own case to the loss and detriment of the latter union, which is clearly a rival union in the two establishments sued in this suit.
41. Accordingly, the suit lacks merit and is dismissed in its entirety with no orders as to costs.



**DATED AT NAIROBI THIS 13<sup>TH</sup> DAY OF JUNE, 2024.**

**MATHEWS NDERI NDUMA**

**JUDGE**

Appearance:

Mr. Munayi Opondo for claimant union

Mr. Obok for 1<sup>st</sup> respondent

Ms. Mbiro for 2<sup>nd</sup> respondent

Mr. Kemboi, Court Assistant

