



**Kenya Shoe and Leather Workers Union v Megh Singh Cushion Makers Limited
(Cause E556 of 2022) [2024] KEELRC 2381 (KLR) (27 September 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2381 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E556 OF 2022
NJ ABUODHA, J
SEPTEMBER 27, 2024**

**BETWEEN
KENYA SHOE AND LEATHER WORKERS UNION CLAIMANT
AND
MEGH SINGH CUSHION MAKERS LIMITED RESPONDENT**

JUDGMENT

1. The Claimant a registered trade union filed its Memorandum of Claim dated 3rd August,2022 and pleaded inter alia as follows: -
 - a. The Claimant averred that parties herein had a valid recognition agreement and a CBA which regulated terms and conditions of service for all unionisable employees of the Respondent before the Respondent changed its name from Megh Singh Cushion Makers to Megh Sign Cushion Maker’s Ltd. That the parties now have no recognition agreement.
 - b. The Claimant averred that employees of the Respondent joined their union by appending their signature on check off forms acknowledging their membership. That the Respondent had a total workforce of 28 employees and the union had recruited 19 employees which translated to 67.85% which was above 50+ 1 % required under section 54(1) of the [Labour Relations Act](#).
 - c. The Claimant averred that the union wrote a letter to the management with attached model recognition agreement, suggesting meeting with the management on 7th August,2020 at 11 am in the management offices to sign the said document. That when the union went in the company on the said date the management was not available.
 - d. The Claimant averred that on 10th August,2020 it suggested another meeting to be held on 19th August,2020 at 11 am as well as another one vide a letter of 2nd September,2020 for a meeting on 16th September,2020 to sign the recognition agreement but the management was yet again not available without giving any reasons.



- e. The Claimant averred that it was left to report the dispute to the Cabinet Secretary Ministry of Labour & Social Protection since the management was not cooperative. That the Cabinet Secretary appointed a conciliator in the dispute in accordance with section 65(1) of the *Labour Relations Act* to bring amicable settlement.
 - f. The Claimant averred that the conciliator convened a conciliations meeting in his office for the parties to state their case. That the Conciliator gave his report, findings and recommendation where the Claimant agreed with the said findings and recommendations of the conciliator. That the union had followed the right procedure up to the ladder and this matter is well constituted and this court has the jurisdiction to hear and determine. That the employees of the Respondent exercised their democratic right by joining union of their choice in accordance with the section 4 of the *Labour Relations Act*, Article 41 of *the Constitution* and the ILO Conventions Number 87 and 98.
 - g. The Claimant prayed that this court be pleased to direct and order the Respondent to accord recognition agreement to the Claimant to pave way for the parties to engage in CBA negotiations to improve terms and conditions to all unionisable employees.
2. The Respondent did not participate in these proceedings despite service and the court directed the parties to dispense the claim by written submissions.

Claimants' Submissions

3. The Claimant filed its written submissions dated 11th March, 2024 and submitted that in accordance with Rule 3 of their Constitution it was the right union to represent the employees of the Respondent. That it made efforts to meet the Respondent to sign recognition agreement in vain and there was no other union seeking recognition with the Respondent.
4. The Claimant reiterated their claim and submitted that since they filed this matter and served the Respondent it has never participated in the proceedings. That section 48(2) of the *Labour Relations Act* provides for the Minister to direct an employer with more than five employees to deduct union dues and remit them in a specified account. That the Union on 27th July,2020 did send check off forms signed by the Respondent employees who had acknowledged their membership with the Claimant requesting the Respondent to deduct and remit 2.5% of employees basic salary subject to minimum of Kshs 200.
5. The Claimant submitted that the Respondent will not suffer any irreparable harm if it signs the recognition agreement with the Claimant and the findings and recommendations of the Conciliator should be upheld. That the court should direct the Respondent to deduct and remit union dues to the Claimant as per above section 48(2).

Determination

6. The Claimant seeks this court to order the Respondent to enter in to recognition agreement with it so that it may start the CBA negotiations to better the terms of the Respondent's employees and the Respondent to deduct and remit union dues as per its check off forms. It is worth noting that before the Respondent changed its name to a limited company it had a recognition agreement with the Claimant who had stated that there was no other union seeking recognition.
7. It is a democratic right of an employee to join any trade union of their choice as per section 4(1)(b) of the *Labour Relations Act* and article 41 of *the Constitution* among other international provisions.



Section 54 of the [Labour Relations Act](#) provides for recognition of trade unions and CBA. It provides as follows: _

54(1) An employer, including an employer in the public sector, shall recognise a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees.

8. The Claimant alleged that the Respondent had 28 employees and it recruited 19 employees which formed 67.85% which is above the simple majority of 50+1%. This therefore means that the Claimant had attained the simple majority of the Respondent's work force.
9. The court notes that the Claimant tried to have meeting with the Respondent in order to sign the recognition agreement in vain and the matter was referred to the Cabinet Secretary who appointed the conciliator as per section 65 of the Act. The conciliator gave their recommendations which included the Respondent initiating the process of recognizing the Claimant and remit any deducted dues. The respondent failed and or ignored to do so hence the claimant approached the Court.
10. The court has the necessary jurisdiction to hear and determine this claim after the internal dispute resolution failed.
11. Whereas The Claimant having met the simple majority required by the Act which is 50+1 % the Respondent was bound to recognize it. The court in the case of *Kudheiha Workers v United States International University-Africa (USIU)* [2021] eKLR held that:-

“It is therefore clear that for a union to qualify for recognition it must prove that it has recruited a simple majority of the employees of the Respondent.

12. The court notes that the Conciliator pointed out that the Respondent did not bring documents as requested to counter the Claimant's assertions and in this case the Respondent did not participate in these proceedings to rebut the Claimant's assertions on achieving the simple majority. The court takes the Claimant's assertions as true.
13. On the issue of union dues section 48 and 49 of the [Labour Relations Act](#) provides for the same The Minister is required to gazette such deductions. The court from the pleadings notes that the same were gazetted by the Minister in 2012 and the parties had a recognition agreement before the Respondent changed to a limited liability company. The Claimant sent check off forms on 27th July,2020 to the Respondent who was supposed to deduct and remit unions dues of the employees who were members of the Claimant but that did not happen. The court notes that once the union sends the check off forms to the Respondent, the Respondent had a duty to start the deductions and remittance of the dues.
14. In the case of *Kenya National Union of Nurses v County Public Service Board Homabay* [2018] eKLR the court observed as follows:-

More fundamentally, the recognition agreement does not affect the deduction and remittance of union dues. The purpose or consequence of signing a recognition agreement is to give the union a right to negotiate a collective bargaining agreement. Deduction and remittance of union dues is not based on recognition agreement but on Form S which as I have stated above, is the authority for deduction of union dues from the salary or wages of an employee. The amount deductible is set by the Gazette Notice from the Minister for Labour which also gazettes the Bank and account into which the deductions should be sent.



15. The court therefore orders the Respondent to recognize the Claimant's union so long as its members are as they were at filing of this suit or have not dropped below the simple majority.
16. The Respondent is further ordered to forthwith remit deducted union dues to the claimant's designated account as per the checkoff forms.
17. It is so ordered.

DATED AT NAIROBI THIS 27TH DAY OF SEPTEMBER, 2024

DELIVERED VIRTUALLY THIS 27TH DAY OF SEPTEMBER, 2024

ABUODHA NELSON JORUM

PRESIDING JUDGE-APPEALS DIVISION

