



**Kenya Plantation and Agricultural Workers Union v Red Hill Nurseries Ltd
(Cause E836 of 2024) [2024] KEELRC 13283 (KLR) (28 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13283 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E836 OF 2024
S RADIDO, J
NOVEMBER 28, 2024**

BETWEEN
**KENYA PLANTATION AND AGRICULTURAL WORKERS
UNION CLAIMANT**
AND
RED HILL NURSERIES LTD RESPONDENT

RULING

1. The Kenya Plantation and Agricultural Workers Union (the Union) sued Red Hill Nurseries Ltd (the Respondent) and it stated the Issue in Dispute as:
Failure to deduct and remit union dues, to sign recognition agreement and victimisation of employees on account of unionisation.
2. Filed together with the Memorandum of Claim was a Motion dated 2 October 2024, seeking orders:
 - i. ...
 - ii. This Honourable Court be pleased to prohibit and/or restrain the Respondent from victimising, harassing, or threatening to dismiss its employees who have joined the Claimant/applicant from employment pending the hearing and determination of this application and/or cause.
 - iii. This Honourable Court be pleased to compel the Respondent to deduct and remit union dues from the emoluments of the (323) Three Hundred and Twenty-Three employees of the Respondent or any number thereof who have signed into the Claimant/applicant union’s membership and remit the dues so deducted to the Claimant/applicant.
 - iv. This Honourable Court be pleased to compel the Respondent to sign a recognition agreement with the Claimant/applicant herein.



3. When the Motion was placed before the Court on 7 October 2024, it directed the Union to serve ahead of hearing on 15 October 2024.
4. On 15 October 2024, the Respondent requested for more time to respond to the Motion. The Court gave directions on the filing and exchange of affidavits and submissions.
5. The Respondent filed a replying affidavit on 30 October 2024.
6. None of the parties filed submissions within the agreed timelines.
7. The Court has considered the Motion and affidavits.

Harassment and Victimisation of Employees

8. Despite seeking an order restraining the Respondent from harassing or victimising employees who had joined the Union, the Union did not advert to any threats made by the Respondent to any of the employees in the foundational affidavit.
9. Equally, there was no evidence in any form from any of the employees who had been threatened or felt threatened.
10. The Union in essence did not make a prima facie case for the grant of the order as sought.

Deduction of union Subscriptions

11. Under section 19 of the *Employment Act*, 2007, an employee is free to dispose of his wages in whichever way he or she wishes, including deductions authorised under a written law.
12. Where an employee has joined a trade union, under the *Labour Relations Act*, the trade union is expected to submit to the employer a schedule showing the act in Form S. In cases where the Cabinet Secretary has made the requisite order for deduction of trade Union dues, the employer should commence the deductions from the employees' salaries within 30 days.
13. The Form Ss exhibited to the Motion are dated 9 September 2024 and 21 September 2024, and were forwarded to the Respondent through letters dated 10 September 2024 and 21 September 2024.
14. The Respondent has deponed in its replying affidavit that it remitted union subscriptions to the Union in respect of some 186 employees who had joined the Union for the month of September 2024. It was also deponed in the affidavit that some of the names in the check-off forms did not belong to employees while some had disowned the Union.
15. The Union moved the Court on 3 October 2024, before the expiry of the 30 days allowed under section 48 of the *Labour Relations Act*.
16. The Union moved the Court in haste before allowing the timelines outlined in law to run its legal course.
17. The *Labour Relations Act* encourages the social partners to in good faith to attempt alternative dispute resolution avenues (conciliation).
18. Alternative dispute resolution has also been given constitutional underpinning and the same has been set out in section 15 of the *Employment and Labour Relations Court Act*.
19. The Union did not attempt to refer the dispute with the Respondent to conciliation.



20. In light of these considerations and more particularly that subscriptions for 186 employees were remitted in September 2024, the Court is not inclined to grant the order on deduction and remitting trade union dues before the parties attempt conciliation.

Orders

21. Flowing from the above, the Court orders:
- i. The orders sought in the Motion dated 2 October 2024 are declined.
 - ii. The parties to attempt to resolve the dispute through conciliation by the County Labour Officer, Nairobi.
 - iii. The County Labour Officer, Nairobi to inquire into the dispute and file a report within 45 days.
22. Further proceedings and or directions on 28 January 2025.
23. Costs in the cause.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 28TH DAY OF NOVEMBER 2024.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For Union Mr Awino, Legal Officer, Kenya Plantation & Agricultural Workers Union

For Respondent Mr Kimani instructed by

Court Assistant Wangu

