



**Kenya Union of Commercial Food and Allied Workers v Transmattresses Limited
(Cause E020 of 2023) [2024] KEELRC 13287 (KLR) (28 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13287 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KITALE
CAUSE E020 OF 2023
MA ONYANGO, J
NOVEMBER 28, 2024**

BETWEEN

**KENYA UNION OF COMMERCIAL FOOD AND ALLIED
WORKERS CLAIMANT**

AND

TRANSMATTRESSES LIMITED RESPONDENT

(Before Hon. Lady Justice Maureen Onyango)

RULING

1. This ruling is in respect of two applications. The first application is dated 18th July 2023 filed by the Claimant in which it seeks the following orders:
 - a. Spent
 - b. That the Honorable Court do issue interim orders directing the Respondent to commence deduction and remittance of agency fees from all unionisable employees, who are nonmembers of the Applicant pending hearing and determination of the Application.
 - c. That the Honorable Court do issue interim orders directing the Respondent to comply with the Legal Notice No. 118 issued on 26th May 2022 by the Cabinet Secretary for Labour.
 - d. That the Honorable Court do issue orders directing the Respondent to effect deduction and remittance of agency fees from all unionisable employees who are not members of the Claimant/Applicant,
 - e. That cost in the cause.
2. The grounds in support of the application are that:



- i. That the parties herein have a valid recognition agreement and have negotiated a Collective Bargaining Agreement which is in force.
 - ii. That the review of the said Collective Bargaining Agreement is a matter before the Court in Kitale ELRC cause No. E009 of 2023.
 - iii. That pursuant to the said Collective Bargaining Agreement both members of the Applicant and non-members have been enjoying the better terms and conditions arising therein.
 - iv. That members of the Applicant have been paying monthly union subscriptions while 138 other unionisable employees who are not members but beneficiaries of the CBA continue to enjoy better working terms and conditions without paying any subscription.
 - v. That as per the provision of the Labour Relations Act, 2007 the Claimant/Applicant made a request to the Cabinet Secretary Ministry of Labour seeking an order requiring the Respondent to deduct and remit agency fees.
 - vi. That an order was issued by the Cabinet Secretary directing the Respondent to commence the deduction of agency fee and the same was gazetted on 26th May 2022 under Legal Notice No. 118.
 - vii. That the Applicant served the said order to the Respondent and further wrote to them requesting implementation of the order.
 - viii. That the Respondent failed and refused to implement the order and has been adamant in executing the deduction and remittance of agency fees.
 - ix. That the Respondent has been victimizing and intimidating employees to withdraw their membership to debilitate the activities of the Applicant by denying them members monthly subscriptions.
 - x. That the Respondent's obstinate behavior is aimed at denying the Applicant its lawful dues and sabotaging its activities.
 - xi. That the Respondent lacks any justifiable reason why they have failed to implement the order issued by the Cabinet Secretary Ministry of Labour.
3. The application is further supported by the affidavit of MIKE O. ORANGA, the Claimant's National Organizing Secretary in which he reiterates the grounds on the face of the application.
 4. The second application is dated 30th January 2024 and is filed by the Respondent wherein it seeks the following orders:
 - a. Spent
 - b. That this Honourable Court be pleased to stay proceedings herein for the delivery of Judgment on 1st February 2024 and schedule this application for hearing and final determination of our application.
 - c. That an order do issue to confirm that the Applicant Respondent no longer has any relationship and/or dealings with the Respondent/Claimant since none of the Applicant/ Respondents employees/staffers on premises ceased to be members of the Respondent/ Claimant Union.
 - d. That cost of this application be provided for.



5. The application is supported by the grounds on the face thereof which are that:
 - a. That the Applicant Respondent has written confirmation that all its employees/staffers 138 have withdrawn their membership from the Respondent/Claimant.
 - b. That the Respondent/Claimant derives its claim for union dues and protection of employee/staffer interest out of employee/staff membership it retains in the Applicant/Respondent company.
 - c. That the Applicant/Respondent has communicated to the Respondent/Claimant all membership withdrawals from the Respondent/Claimant Union of the development.
 - d. That the Applicant/Respondent has placed before the National Labour Board the current developments for purposes of revocation of the Recognition Agreement.
 - e. That unless this application is granted, the Applicant/Respondent stands to suffer irreparable lose and damage.
 - f. That the current development absolves the Applicant/Respondent from paying any dues to the Respondent/Claimant.
6. The issue in dispute in the claim is refusal/failure to deduct and remit agency fees. The prayers in the claim are;
 - a. Order the Respondent to commence deduction and remittance of agency fees from all unionisable employees who are non-members of the Claimant.
 - b. Order the Respondent to pay the unremitted agency fees from their funds.
 - c. The cost of the suit be provided for by the Respondent.
7. It is therefore clear that the two applications cannot be heard without delving in the issues in the claim. The two applications if dealt with will compromise the course of action in the claim.
8. I therefore direct that the issues in the applications be consolidated and be heard together with the claim. A hearing date will be taken at the time of delivery of the ruling.
9. Orders accordingly.

DATED, DELIVERED AND SIGNED AT ELDORET THIS 28TH DAY OF NOVEMBER 2024.

M. ONYANGO

JUDGE

