



Banking Insurance and Finance Union v Unaitas Sacco Society Ltd (Cause 328 of 2022) [2024] KEELRC 2797 (KLR) (14 November 2024) (Judgment)

Neutral citation: [2024] KEELRC 2797 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 328 OF 2022
K OCHARO, J
NOVEMBER 14, 2024**

**BETWEEN
BANKING INSURANCE AND FINANCE UNION CLAIMANT
AND
UNAITAS SACCO SOCIETY LTD RESPONDENT**

JUDGMENT

Introduction

1. By Statement of Claim dated 10th May 2022, the Claimant sued the Respondent seeking the following reliefs;
 1. Declaration that the union is entitled to union dues from the two hundred and two (202) members of the union.
 2. An order directing the respondent to deduct and remit outstanding union dues to the claimant's registered account stated in the check-off forms due from the 25th of April 2017.
 3. Costs of this claim.
 4. Any other relief this honourable court deems just and necessary to award.
2. The Respondent resisted the Claimant's Claim through a Memorandum of Response dated 24th June 2022 stating that the check-off forms provided by the Claimant did not meet the statutory specifications and the Respondent was therefore not obligated to remit or deduct union dues.

Claimant's case

3. The Claimant stated that between 21st March 2017 and 6th April 2017 it recruited two hundred and two unionisable employees of the Respondent, to its membership, and served twenty-three sets of check-off forms to the Respondent on the 25th April 2017.



4. The Respondent's Human Resource Manager Mr Murimi, wrote an email to the Claimant informing them that the Respondent would not deduct from its employees' salary and remit union dues as requested.
5. Consequently, the Claimant reported a trade dispute to the Ministry of Labour. No fruit was realized out of the conciliation process as the parties didn't reach any agreement. Resultantly, the Conciliator issued a certificate of disagreement.
6. The failure by the Respondent to remit the union dues to the Claimant within the time stipulated under law offended the law and the relevant International Labour Organization conventions.

Respondent's case

7. The Respondent argued that the Claimant had not attained the statutory threshold for recognition by the Respondent. Additionally, the alleged members of the Claimant's union gave it notifications countermanding the Claimant's claim that they were its members.
8. Furthermore, the check-off forms could not command any compliance under the law as they were in material respects incomplete for want of particulars of membership numbers of the recruited employees and in other respects payroll numbers and signatures of the recruits. The forms were accompanied by notifications that were not in consonance with the Ministerial order relied upon in issuing the same.
9. The Respondent's communication about its inability to effect the deductions sought by the Claimant was well founded within the meaning of the provisions of Section 48(6) of the [Labour Relations Act, 2007](#).

Claimant's Submissions

10. The Claimant identified the following issues for determination, thus; whether the Claimant union is the appropriate union to represent employees in the sector which the Respondent operates; whether the Claimant union has obtained the relevant ministerial order for deduction and remittance of trade union dues; whether refusal by the Respondent to deduct and remit trade union dues in respect of the two hundred and two unionisable employees who are members of the union is justified; whether trade union dues and recognition are distinct in law; whether the Claimant union is entitled to the reliefs sought.
11. On the first issue, the Claimant submitted that it is a registered trade union whose membership according to its constitution in Rule 3, covers all unionisable employees engaged in the Sacco sector among other sectors in Kenya. The Respondent's members are eligible to join the Claimant's membership, as the Respondent operates in the sector that it covers.
12. On the second issue, the Claimant submitted that it obtained a ministerial order in accordance with section 48(2) of the [Labour Relations Act](#), on the 13th of January 2009 vide Gazette Notice number 516 of 2009 where the minister of labour and social services authorized the deduction and remittance of trade union dues on behalf of the Claimant union from any employer who employs not less than five members of the union.
13. However, there is no legal requirement to serve the check-off forms together with the minister's order. To buttress this, the Claimant relied on the case of Kenya Plantation and Agricultural Workers Union Versus Expressions Flora Limited (2013) eKLR where it was held that..." There is no statutory requirement for the union to serve the ministerial order..."



14. On the third issue, the Claimant submitted that it recruited two hundred and two unionisable employees of the respondent into its membership between 21st March 2017 and 6th April 2017. On the 5th of May 2017 the Claimant served the Respondent with twenty-three sets of check-offs duly signed by all the unionisable employees of the Respondent. The respondent, however, did not deduct and remit union dues from the said unionisable employees.
15. The Claimant did not receive any revocations or withdrawal notices from the unionisable employees of the Respondent who had joined the Claimant. The letters on pages 26-32 of the Respondent's bundle of documents are all dated the same day that is 8/5/2017, and seem to have been written by the same person as they all have the wording "Kindly note that I don't want to join the above-quoted union". All the letters also bear the Respondent's letterhead.
16. The Respondent should have made deductions and remitted union dues thirty (30) days after the service of check-offs which was 3rd May 2017. The Claimant relied on the case of KUCFAW vs Eldomatt Supermarkets Limited where the Court held that "in signing the form S (check off forms) the respondent's employees were unequivocally directing the respondent to abide by the law and deduct and remit the monthly union subscriptions to the union, and by failing to commence the deductions after 30 days the respondent was in clear breach of both sections 48 of the Labour Relations Act and section 19(f) of the Employment Act 2007."
17. On the fourth issue, the Claimant submitted that the memorandum of claim before the court is seeking remission of union dues from the Respondent and not a recognition agreement which are distinct. There is no legal requirement, that there should be a recognition agreement between a trade union and an employer for the employer to remit union dues, the trade union only has to recruit members. To buttress this, the Claimant relied on the case of Kenya Union of Domestic Hotels Educational Institutions Hospitals & Allied Workers (Kudheiha) vs British Army Training Unit Kenya (2015) eKLR.
18. On the last issue, the Claimant submitted that from the foregoing, the orders sought by the Claimant should be granted. The Claimant relied on the case of Transport Workers Union Vs Automobile Association of Kenya and Kenya Long Distance Truck Drivers & Allied Workers Union (2016) eKLR where the Court held that:-

"where the respondent did not remit the due union dues to the claimant and or failed to make a deduction from the wages of the claimant members until the notification of their said resignations, such union dues should be remitted from the respondent accounts..."

Respondent's submissions

19. The Respondent submitted that the alleged two hundred and two members did not pay the required membership fee as per Clause 3B of the Claimant's constitution and therefore did not meet the criteria for membership with the Claimant.
20. Furthermore, all the alleged members did not sign the check-off forms. Additionally, the ministerial order that the check-offs are based on is not on record in these proceedings. Recruitment of the two hundred and two members is therefore not factual.
21. In conclusion, the Respondent's staff had not signed up for the membership of the Claimant. The Respondent relied on the case of Tailors and Textiles Workers Union v Global Apparels EPZ Limited;



Fidelis Omwamba Onsongo & 6 others (Proposed Interested Parties) [2019] eKLR, at paragraph 27 thereof thus:-

“It is thus clear that an employer cannot deduct union dues from a member who has resigned from the union. The union members write these resignations to their employer and the employer has the extra duty to notify the union by forwarding a copy of the notice of resignation to the trade union.”

Analysis and determination

1. Whether the Claimant is entitled to collection and remission of union dues and whether the Respondent is obliged to deduct and remit the same.
2. Whether the Claimant should be awarded the reliefs sought.

Whether the Claimant is entitled to collection and remission of union dues and whether the Respondent is obliged to deduct and remit the same

22. Section 48(2) of the *Labour Relations Act* provides that,

“A trade union may, in the prescribed form, request the Cabinet Secretary to issue an order directing an employer of more than five employees belonging to the union to—

- (a) deduct trade union dues from the wages of its members; and
- (b) pay monies so deducted—
 - (i) into a specified account of the trade union; or
 - (ii) in specified proportions into specified accounts of a trade union and a federation of trade unions.”

23. A clear reading of Section 48(2) reveals that there is no requirement that there be present a recognition agreement before deduction and remission of union dues are effected. If it was the intention of the Legislature that that be the case, nothing could have been easier for them that to expressly so provide. In my view, the obligation placed upon the employer under this provision of the law, sets in once the union recruits five of its employees into its membership and the deduction and remission of the dues is requisitioned through the Check-off forms presented.

24. The Court in the case of *Kenya Union of Commercial Food and Allied Work v Mitra Enterprises Limited & another (Cause 62 of 2020)* [2023] KEELRC 2122 (KLR) (21 September 2023) (Ruling) held that;

“By Counsel for the Applicant/Respondent’s own admission during the oral hearing, the Applicant has currently a total of 13 employees in their service that are members of the Claimant. The requirement by law is just 5 employees, and which position the Court in its judgment had already made a finding on.”

25. In the case of *Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals & Allied Workers (Kudheiha) v British Army Training Unit Kenya* [2015] eKLR, Mbaru J held:

“Under section 48 of the *Labour Relations Act*, an employer is bound to remit all union dues deducted to the union account irrespective of recognition as under this part, where there are



more than 5 employees in the membership of a union, the employer should make deductions and remit to the union. The deduction and remittance of union dues from employees who have acknowledged union membership should be based on the Minister for Labour making an appropriate order through Kenya Gazette indicating the account to which such union dues should be remitted. It does not require a recognition agreement between a union and an employer. The duty on the union is to submit to the employer the names and identity card numbers of the employees through the check-off forms. This is not contested as the Respondent has complied in this regard.”

26. By reason of the premises, I find the Respondent’s position that it didn’t deduct and remit union dues because the Claimant hadn’t reached the requisite threshold in regard to recruitment of its employees into it [the Claimant’s] membership to enable recognition agreement, without any basis in law, and standing of quicksand.
27. The Respondent does not deny receiving the check-off forms from the Claimant. The Respondent’s argument is that the check-off forms did not meet the statutory specifications. I have carefully considered the Check-off forms, and I am of the view that they possess details that could enable the Respondent undertake that which the law required of it, deduct and remit union dues. Assuming some of the forms lacked some particular details as the Respondent alleged, then the question that springs up, is, why didn’t it deduct union dues from, and for, members whose details in its estimation were proper?
28. Section 48(6), (7) and (8) of the LRA provides that;
- “ (6) An employer may not make any deduction from an employee who has notified the employer in writing that the employee has resigned from the union.
- (7) A notice of resignation referred to in subsection (6) takes effect from the month following the month in which it is given.
- (8) An employer shall forward a copy of any notice of resignation he receives to the trade union.”
29. In the Respondent’s list of documents are 7 letters from the Respondent’s employees stating that they did not wish to join the Claimant union. There are also forms inquiring whether the employees were interested in joining the Claimant union. Sec 48(8) of the LRA requires the same to be forwarded to the union. The Respondent didn’t demonstrate that these letters and forms were forwarded to the Claimant union. Even if one was to assume that there were seven resignations, that couldn’t relieve the Respondent of the statutory duty as regards union dues for the other unionisable employees.
30. In conclusion, I find that the Respondent is bound statutorily to collect union dues from those employees whose details are obtaining on the check-off forms i.e. members who duly filled and signed Form S and remit the same to the Claimant union.

Whether the Claimant should be awarded the reliefs sought

31. I note that the Claimant seeks an order directing the Respondent to deduct and remit outstanding union dues to the claimant’s registered account stated in the check-off forms due from the 25th of April 2017. This prayer is couched in a manner that presupposes that the union dues were collected from the stated date, to date, without being remitted. The material presented before this Court doesn’t suggest or prove this to be the position. The Respondent can only remit money deducted from the remuneration of the recruited members, not from its own account[s].



32. Faced with a similar prayer as is in the instant case, the Court in the case of Kenya Union of Commercial Food and Allied Workers v Mitra Enterprises Limited & another [2021] eKLR, aptly rendered itself thus;

“I find and hold that the Claimant has recruited more than 5 members in the employ of the 1st Respondent. Consequently, I enter judgment for the Claimant compelling the 1st Respondent to henceforth deduct Union dues from the salaries of the current and future members of the Claimant’s Union and remit the same to the Claimant’s account.

I decline the prayer to compel the 1st Respondent to pay the Union dues for the months when the dues were not deducted, as an employer does pay dues from its own account but from the employee’s salary.”

33. Consequently, I hold that the Respondent should deduct union dues from the salaries of both current and future members of the Claimant union and transfer these funds to the Claimant’s account.

34. In the upshot, Judgment is hereby entered for the Claimant in the following terms.

- a. The Respondent is statutorily bound to deduct union dues from the salaries of the current and future members of the Claimant union and to be specific those who have signed or signs Form S, and remit the same to the Claimant. For clarity of record this order shall take effect as from 30th December 2024.
- b. Each party shall bear its own costs.

READ SIGNED AND DELIVERED THIS 14TH DAY OF NOVEMBER, 2024.

OCHARO KEBIRA

JUDGE

In the Presence of

..... For the Claimant

..... For the Respondent.

