



**Kenya Union of Commercial Food and Allied Workers v Sai Electrical  
and Hardware Limited (Employment and Labour Relations Cause  
E031 of 2022) [2024] KEELRC 2748 (KLR) (7 November 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2748 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E031 OF 2022  
MA ONYANGO, J  
NOVEMBER 7, 2024**

**BETWEEN**

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

**AND**

**SAI ELECTRICAL AND HARDWARE LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant is a trade union registered under the *Labour Relations Act* and is mandated in its constitution under Rule No. 5 to represent employees in the commercial and food sector.
2. The Respondent is a registered limited liability company registered under the laws of Kenya and operates a hardware shop in Eldoret.
3. By virtue of its constitution the employees of the Respondent fall within the purview of the Claimant's membership and it is the right union to represent the employees of the Respondent in labour matters.
4. The Claim herein was instituted by the Claimant vide a Statement of Claim dated 24<sup>th</sup> November 2022 and filed in court on 29<sup>th</sup> November 2022 in which it prayed that the court:
  - i. Do order the Respondent to recognize the Claimant union with immediate effect
  - ii. Do order the Respondent to deduct and remit union dues from the date of judgment going forward
  - iii. Do order the Respondent to pay arrears of union dues from the month of December 2021 to date of judgment from their own funds.



- iv. Do order the Respondent to engage the Claimant in collective bargaining within 30 days upon signing Recognition Agreement
  - v. Interest on prayer (iii) to accrue at court rates until payment in full
  - vi. Costs of the suit be awarded to the Claimant
  - vii. Any other remedy that the Honourable Court may deem fit and appropriate to grant
5. In the Statement of Claim, the Claimant avers that it recruited 5 out of 6 unionisable employees of the Respondent which translates to 83% membership far above simple majority membership threshold required for recognition.
  6. It is further averred that the Claimant wrote to the Respondent forwarding the check off forms and a standard recognition Agreement for the purposes of effecting Trade Union dues deductions and signing the Recognition Agreement but the Respondent refused even after the Claimant followed up through several letters.
  7. It is the Claimant's contention that it reported a Trade Dispute on 19<sup>th</sup> January 2022 and a conciliator was appointed who convened conciliation meetings which the Respondent declined to attend.
  8. The Claimant maintains that the Respondent has since refused to deduct and remit the union dues despite being served with the check off forms as required under Section 48 of the [Labour Relations Act](#).
  9. It is the Claimant's case that the Respondent's failure to recognize the Claimant is unlawful and violates Article 41 of [the Constitution](#) and the ILO Conventions No. 87 and 98.
  10. In response, the Respondent filed a Reply to Statement of Claim dated 25<sup>th</sup> May 2023 denying the averments in the claim. The Respondent maintained that it has no contract of employment with any of the alleged unionisable employees and has never had the same save that it would from time to time engage the services of any of the said employees as casual employees on a needs basis.
  11. The Respondent averred that the person listed on the check off list as Samuel Wamukoya is a manager of the Respondent's company and therefore not eligible for union membership.
  12. It is the Respondent's further position that it cannot enter into a Recognition Agreement with the Claimant as majority of its employees do not belong to the Claimant's union and as such, the Claimant has not met the eligibility criteria contained in PART VI of the [Labour Relations Act](#).
  13. On 5<sup>th</sup> June 2023, the Respondent filed a Preliminary Objection on the following grounds:
    - i. The Claimant lacks locus standi to institute, maintain and argue the prayers in the Memorandum of Claim
    - ii. The Memorandum of Claim offends the provisions of section 48 and 54 of the [Labour Relations Act, 2007](#)
    - iii. The Claimant does not properly represent the grievant as there is no recognition agreement, and the Claimant does not meet the criteria set in law for recognition by the Respondent
    - iv. There is a pending matter on the issue of the Respondent's recognition and more so regarding the grievant Evans Otieno Owino being Eldoret Employment & Labour Relations Court No. E021 of 2022 (Kenya Union of Commercial Food & Allied Workers vs Sai Electrical Hardware Limited) pending determination by this court and the instant suit is res judicata



- v. The suit offends section 35(1) and 44(1) of the *Employment Act* to the extent that the Claimant's purported member was employed on casual terms
  - vi. The suit as filed constitutes an abuse of the court process and should be dismissed with costs.
14. The court directed that the preliminary objection and the claim be disposed of together by way of written submissions. The Respondent filed its submissions on 30<sup>th</sup> May 2023 while the Claimant's submissions were filed on 2<sup>nd</sup> November 2023.

### **Determination**

15. I will consider the Preliminary Objection first as it has the potential to dispose of the entire suit if successful.
16. The grounds raised by the Respondent in the Preliminary objection, to my understanding, is that the Respondent is of the view that this suit is res judica as the Claimant filed a suit on behalf of one Evans Otieno Owino against the Respondent in Eldoret ELRC Cause No. E021 of 2022.
17. Clearly, from a reading of the prayers sought by the Claimant herein, the suit herein is not res judicata as Eldoret ELRC Cause No. E021 of 2022 was filed on behalf of a grievant who is a member of the Claimant and a former employee of the Respondent. The issues raised in this suit relate to recognition of the Claimant by the Respondent and deduction of union dues.
18. The Preliminary objection raised by the Respondent is thus misplaced and lacks merit.
19. The issues that fall for this court's determination from the parties' pleadings and the submissions in the main claim are:
- i. Whether the Claimant has attained a simple majority to qualify for recognition by the Respondent;
  - ii. Whether the Respondent should deduct and remit union dues from the employees who have already acknowledged their union membership.
20. Section 54 of the *Labour Relations Act* provides for recognition as follows-
- 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.
  - 2. A group of employers, or an employers' organisation, including an organisation of employers in the public sector, shall recognise a trade union for the purposes of collective bargaining if the trade union represents a simple majority of unionisable employees employed by the group of employers or the employers who are members of the employers' organisation within a sector.
  - 3. An employer, a group of employers or an employer's organisation referred to in subsection (2) and a trade union shall conclude a written recognition agreement recording the terms upon which the employer or employers' organisation recognises a trade union.
  - 4. The Minister may, after consultation with the Board, publish a model recognition agreement.
  - 5. An employer, group of employers or employers' association may apply to the Board to terminate or revoke a recognition agreement.



6. If there is a dispute as to the right of a trade union to be recognised for the purposes of collective bargaining in accordance with this section or the cancellation of recognition agreement, the trade union may refer the dispute for conciliation in accordance with the provisions of Part VIII.
  7. If the dispute referred to in subsection (6) is not settled during conciliation, the trade union may refer the matter to the Industrial Court under a certificate of urgency.
  8. When determining a dispute under this section, the Industrial Court shall take into account the sector in which the employer operates and the model recognition agreement published by the Minister. Election of trade union representatives.
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21. The Claimant has alleged that it recruited 5 employees out of a possible 6 unionisable employees of the Respondent, forwarded the duly filled and signed check off forms to the Respondent as required by section 48(3) of the [Labour Relations Act](#) but the Respondent declined to recognize it.
  22. The Claimant relies on list of documents dated 24<sup>th</sup> November 2022.
  23. The Respondent stated that the person listed as Simon Wamukoya was in management and therefore not eligible for union membership and further that he never consented to being recruited into the Claimant's union. In support of this position an affidavit sworn by the said Simon on 20<sup>th</sup> December 2022 was filed by the Respondent in its bundle of documents.
  24. Regarding the other four persons listed in the check off form, the Respondent denied that they are its employees, but states that it employs them as casuals.
  25. No documentation was submitted to court in this regard to confirm who the employees of the Respondent were so as to rule out the persons listed in the check off forms being employees of the Respondent. This information can only be submitted to court by the Respondent as the Claimant would have no access to such information.
  26. There is further no evidence that Simon Wamukoya is a manager and therefore not unionisable. The said Simon Wamukoya did not categorically state in his affidavit sworn on 20<sup>th</sup> December, 2022 that he did not sign the check-off form or that the signature therein is not his.
  27. By dint of section 10 and 74 of the [Employment Act](#), it was incumbent upon the Respondent to rebut the Claimant's evidence that it had recruited into its membership more than 51% simple majority as required by section 54 of the [Labour Relations Act](#) by providing a list of its employees.
  28. Section 48 is clear on the role of an employer once it is served with the check off form. The Section provides as follows:
    48. Deduction of trade union dues.
      - (1) In this Part, "trade union dues" means a regular subscription required to be paid to a trade union by a member of the trade union as a condition of membership.
      - (2) A trade union may, in the prescribed form, request the Minister 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.
  - (3). An employer in respect of whom the Minister has issued an order under subsection (2) shall commence deducting the trade union dues from an employee's wages within thirty days of the trade union serving a notice in Form S set out in the Third Schedule signed by the employees in respect of whom the employer is required to make a deduction.
  - (4). The Minister may vary an order issued under this section on application by the trade union.
  - (5). An order issued under this section, including an order to vary, revoke or suspend an order, takes effect from the month following the month in which the notice is served on the employer.
  - (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. As already established, the Respondent herein was served with the check off forms by the Claimant. The Respondent upon receipt of the check off forms was required to deduct union dues from its employees whose names appeared therein.
30. From the evidence on record, I find and hold that the Claimant has proved its case on a balance of probabilities. Consequently, I enter judgement in favour of the Claimant in the following terms:
- a. The Respondent is hereby ordered to sign a recognition agreement with the Claimant within 30 days from today.
  - b. The Respondent is hereby ordered to deduct and remit union dues from employees who have acknowledged their membership through signing the check off forms.
  - c. Parties are directed to commence collective bargaining in the manner provided in the law upon signing recognition agreement.
31. The Respondent to pay the Claimant's costs of this suit which I assess at Kshs. 50,000 as the Claimant was represented by a union official and the costs are therefore not subject to assessment under the Advocates Remuneration Order.
32. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 7<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**MAUREEN ONYANGO**

**JUDGE**

