



Kenya Concrete, Structural, Ceramic Tiles Wood Plys and Interior Design Workers Union v Intex Company Limited; Kenya Building, Construction, Timber, Furniture and Allied Industries Employee Union (Interested Party) (Employment and Labour Relations Cause E559 of 2020) [2024] KEELRC 13339 (KLR) (3 December 2024) (Judgment)

Neutral citation: [2024] KEELRC 13339 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E559 OF 2020**

**AN MWAURE, J
DECEMBER 3, 2024**

BETWEEN

KENYA CONCRETE, STRUCTURAL, CERAMIC TILES WOOD PLYS AND INTERIOR DESIGN WORKERS UNION CLAIMANT

AND

INTEX COMPANY LIMITED RESPONDENT

AND

KENYA BUILDING, CONSTRUCTION, TIMBER, FURNITURE AND ALLIED INDUSTRIES EMPLOYEE UNION INTERESTED PARTY

JUDGMENT

Introduction

1. The Claimant filed a memorandum of claim dated 21st September 2020.

Claimant’s case

2. The Claimant avers that it recruited 69 unionisable employees of the Respondent for membership and requested the Respondent to deduct and remit trade union dues from their wages.
3. The Claimant avers that the respondent has refused to deduct and remit union dues from April 2019 to date into the claimant’s bank accounts contained in [Legal Notice No. 50 of 2012](#) dated 8th May 2014.
4. The Claimant avers that the Respondent has disregarded the findings and recommendations of the conciliation process made on 1st August 2019 which recommended deductions and remittance of trade union dues in its favour.



5. The Claimant avers that the Respondent had an excellent opportunity and obligation to remit the deduction for union dues and ensure compliance to the effect from the wages of all recruited members as provided under section 48(1) of the *Labour Relations Act*.
6. The Claimant avers that its members are concerned that the Respondent and its agents may continue to violate their labour rights by ignoring and refusing to deduct and remit the union dues outlined in the labour laws as well as denying them their constitutional right of representation and fair labour practices.
7. The Claimant avers that its interests and constitutional obligations for representation and other administrative duties in favour of its members are bound to be greatly prejudiced owing to the actions of the Respondent.
8. The Claimant prays for orders that:-
 1. Directing the Respondent to continue deducting and remitting union dues to the specified bank account and as scheduled in *Legal Notice No. 50 of 2014*.
 2. An order barring the Respondent, his agents, and servants from interfering with the membership of the claimant and on deduction of remittance of union dues unless as provided for under the law.
 3. This Honourable Court be pleased to issue an order directing the Respondents, their agents, assigns, servants and or representatives or any other person claiming through them or otherwise to pay all the unremitted union dues to the claimant's specified and authorized Bank Accounts as prescribed in the Forms "S" duly served upon it and other form S as will be served upon them from time to time as a consequence of continuous recruitments.
 4. This Honourable Court be pleased to issue an order restraining the Respondent its agents, assigns, servants, and or representatives or any other person claiming through them or otherwise from harassing and/or intimidating the Claimant's members on the basis of this litigation.
 5. The Respondent be ordered to pay the Claimant compensation for economic damages.
 6. This Honourable Court be pleased to grant such orders or relief as it deems fit and just in the circumstances.
 7. Costs be borne by the Respondents.

The Respondent's case

9. In response to the memorandum of claim, the Respondent filed an undated response to the memorandum
10. The Respondent denies the allegations in the memorandum of claim and avers the employees were members of another union and did not resign from it.
11. The Respondent avers that the claimant's union did not submit a Minister's order directing it to deduct union dues, as required by section 48 of the *Labour Relations Act*.
12. The Respondent avers that all union dues were remitted to the Kenya Building, Construction, Timber and Furniture Industries Employees Union hereinafter as KBCTFIE Union, which was the recognized union and argues that most of the employees mentioned in the claim were employed on a road project



in Loruk, Pokot region, which was speculated to be completed in March 2019 but they received redundancy letters from November 2018 to March 2019.

13. The respondent avers that some staff, after redundancy, were retained as casuals and were paid fortnightly but were not unionized.
14. The respondent avers that the project was extended to December 2019, with only 8 casual workers remaining. Until their exit, all staff dues, including union dues, were fully paid to the KBCTFIE Union.
15. The respondent avers that 27 employees mentioned were employed by the Resident Engineer, not the Respondent, and their union dues were remitted to the KBCTFIE Union until April 2019.
16. The respondent avers that the issue the claimant union's membership raise that the conciliation report did not recommend remittances of union dues to the claimant union is not correct. They state that they provided receipt of evidence of remittances to the KBCTFIE Union to the Conciliator as per his demand.
17. The Respondent stated that all employees' union dues were properly deducted and sent to the KBCTFIE Union.
18. The respondent avers that 27 employees mentioned were employed by the Resident Engineer, not the Respondent, and their union dues were remitted to the KBCTFIE Union until April 2019.
19. The Respondent avers they disputed claims that 69 employees acknowledged union membership in April 2019, as they had already left employment by that time.
20. The Respondent denies ignoring the Conciliation Report's findings, stating that the Conciliator recommended providing proof of remittances to the KBCTFIE Union, which they did comply with, arguing that this should have resolved the dispute and barred further claims by the Claimant.
21. The Respondent denies allegations in paragraphs 10, 11, and 12 of the Memorandum of claim.
22. The Respondent avers that it complied with employment laws by deducting and remitting union dues to the KBCTFIE Union until employees left.
23. The Respondent avers that the workers mentioned are no longer employed, so no union dues can be remitted to the Claimant.
24. The Respondent avers that it has not received notices of resignation from Kenya Building, Construction, Timber and Furniture Industries Employees Union (KBCTFIE or intentions to join the Claimant Union and only eight casual workers remain on site.
25. The Respondent avers that the claimant is misleading this Honourable by presenting half-truths.
26. The Respondent avers that the Claimant is not entitled to the prayers in the Memorandum of Claim, urging the dismissal of the suit with costs.

Claimant's case

27. The Claimant stated that it complied with section 48(2) of the [*Labour Relations Act*](#) by filing the check-off forms and the gazette notice.
28. The Claimant stated that declaring its members redundant was wrongful as it should have been informed.



Respondent's case

29. The Respondent's witness Human Resources officer (RW1) adopted his witness statement dated 8th December 2020 as evidence in chief together with the bundle of documents as exhibits 1 to 3 respectively.
30. In cross-examination, RW1 stated that the check-off forms were in his presence which contained the names of the respondent's employees.
31. RW1 stated there was a legal notice and he went through it.

Claimant's submissions

32. The claimant submitted that the respondent must pay from their accounts if an employer fails to deduct or remit union dues.
33. The Claimant submitted that the Respondent failed to remit dues despite receiving check-offs from over five union members, violating Articles 36 and 41 of *the Constitution*, which protect the right to associate and unionise. Article 24 states that any limitation must be lawfully justified. The claimant also submitted that the *Labour Relations Act* regulates these rights without derogating from the Bill of Rights.
34. The Claimant submitted that it legally recruited employees in accordance with section 48 of the *Labour Relations Act* and submitted forms for dues deduction, with which the Respondent complied as of 9th May 2023.
35. The Claimant relied on Article 41(2)(c) of *the Constitution* which provides that every worker has the right to form, join, or participate in the activities and programmes of a trade union.
36. The Claimant also relied on section 48 of the *Labour Relations Act* provides by defining "trade union dues" as regular subscriptions paid by members as a condition of membership.
37. Section 48 of the *Labour Relations Act* further provides that a trade union can request the Minister to direct employers of over five union members to deduct and remit these dues to specified accounts and employers must start deductions within 30 days of receiving Form S notice. The Minister can vary such orders, which take effect the month after notice is served. The employers cannot deduct dues from employees who resign from the union, and must forward resignation notices to the union.
38. Section 50(1) and (8) of the *Labour Relations Act* provides that any amount deducted must be paid into the designated trade union or employer organization account within ten days of the deduction and Employers must comply with orders or notices issued under this part, ensure money deducted is paid into the designated account, and not pay money into any account other than the designated one.
39. The Claimant prays this Honourable Court to allow the Memorandum of Claim and order the Respondent to continue remitting union dues.

Respondent's submissions

40. The Respondent submitted that there is no basis for this Honourable Court to order the Respondent to remit union dues to two separate unions without written authority from employees denouncing one union and joining the other.
41. Section 14 of the *Labour Relations Act* provides as follows:



- (1) A trade union may apply for registration if—
 - (a) the trade union has applied for registration in accordance with this Act;
 - (b) the trade union has adopted a constitution that complies with the requirements of this Act, including the requirements set out in the First Schedule;
 - (c) the trade union has an office and postal address within Kenya;
 - (d) no other trade union already registered is—
 - (i) in the case of a trade union of employers or of employees, sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the applicants seek registration; or
 - (ii) in the case of an association of trade unions, sufficiently representative of the whole or a substantial proportion of the trade unions eligible for membership thereof:
42. In *Transport & Allied Workers Union V Kenatco Taxis Limited* [2012] eKLR the court held that two rival unions are claiming the same pool of employees as its members and it would be instructive to note that the provisions of section 14(1)(d)(i) have been breached. There are no indications that the safeguards contemplated in the section were complied with by the Registrar under section 14. It is not in dispute that where parties are fishing from the same pool, there could be overfishing or unfair practices.
43. The Respondent submitted that the Interested Party joined the proceedings in 2021 and provided evidence that supported the Respondent’s earlier documents, showing the Respondent had been remitting union dues to it on behalf of its employees to another union.
44. The Respondent submitted that the Interested Party confirmed that the Respondent is a member of the Roads and Civil Engineering Contractors Association (RACECA) and has a Memorandum of Agreement and several Collective Bargaining Agreements with them. Given these facts, there is no basis for the court to order the remittance of union dues to the Claimant as sought in this Claim.
45. In *Kenya Union of Commercial, Food & Allied Workers V The Honourable Attorney General & 2 others* [2022] eKLR the court held that the statutory principle of simple majority serves important purposes: it ensures orderly collective bargaining, reduces the risk of multiple unions proliferating in the workplace, and enhances industrial peace. Recognizing multiple unions by an employer would lead to chaos.
46. The Respondent submitted that most employees mentioned by the Claimant were involved in a road project in Loruk, expected to end in March 2019. These employees received redundancy letters between November 2018 and March 2019, and their final dues totalling Kshs.4,781,858.04 were paid. Therefore, they are no longer employed by the Respondent, and no union dues can be remitted on their behalf.
47. The Respondent submitted that any payments made to the Claimant during the case were in compliance with court orders and do not constitute an admission of the Claimant’s trade union or recognition for future dues remittance.
48. The Respondent submitted that it did comply with the recommendation of the conciliator by way of a letter dated 9th August 2019 when it wrote to the County Labour officer forwarding copies of proof



of payment of union dues to the interested party. Having complied with the recommendation of the conciliator, the issues were resolved.

49. In conclusion, the Respondent submitted that the Claimant's claim is unmerited and not properly anchored by law. The Respondent also submitted that the Claimant is not entitled to the prayer sought and dismiss the claim in its entirety.

Analysis and determination

50. Having considered the pleadings, submissions and evidence on record, the issues for the Court's determination are:

- a. Whether the respondent was required to deduct union dues to the claimant or the interested party
- b. Whether the claimant is entitled to the reliefs sought

51. The claimant recruited 69 of the respondent's employees into its union using check-off forms which were presented before this Honourable Court. The claimant went ahead to write to the respondent in accordance with Section 48(2) of the Labour Relations Court provides as follows:

“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.”

52. The claimant went ahead to report the matter to the Ministry of Labour as a trade dispute when the respondent failed to remit the union dues. The conciliator's findings indicated that the claimant submitted the check-off list to the respondent in April 2019. There was also an existing Collective Bargaining Agreement between the interested party and the Kenya Association of Building and Civil Engineering Contractors. However, there was no evidence showing that union dues were deducted on behalf of the interested party.

53. The conciliator recommended that the proof of remittance of union dues to the interested party. The interested party availed documentation to show union dues were being remitted.

54. The Respondent argues that most of the employees were declared redundant when the road project in Loruk, Pokot region was speculated to be completed in March 2019 but they received redundancy letters from November 2018 to March 2019 and thus there was no basis for remitting the union dues. There was no proof that these employees were declared redundant. Furthermore, the check-off forms were sent to the respondent with the members signatures.

55. The court is of the view that the respondent was required to remit the union dues for April 2019 as those members did not belong to another union as those were its members. In *Banking Insurance Finance Union (K) v Kenya Revenue Authority (2018) eKLR* the Court of Appeal addressed the issue of how a union can prove membership. The court concluded that a union only needs to provide the signed check-off forms from employees as evidence that those employees have joined the union.



56. The law in Section 48(3) of *Labour Relations Act* provide that if a Minister has issued an order under Sub-section 2 the employer shall commence deducting the union dues from employees' wages within thirty days of serving the Form "S" by the trade Union.

The only exception is where the employee has resigned from the trade union. There is also no evidence that the members who signed the check-off forms had resigned from the trade union.

57. The Minister issued an order via a Supplementary Gazette Notice of 16th May 2016 and ordered the remittances to be effected in a designated account of the union.

58. The Respondent in their response aver that the Petitioners did not obtain an order for the said remittance. But it is evident the same was issued as demonstrated herein above on paragraph 57.

59. The court noted the Respondent purported he produced receipt forwarded to the Labour officer to show they remitted dues to KBCTFIEU as per their letter of 8th August 2019 as proof that they remitted dues to the said union and so were not obliged to remit to the claimant.

The said receipts are however not verifiable proof as it has no details as to which members they were sending the remittances.

60. Having considered the pleadings of the respective parties and their submissions the court finds the claimants have proved their case on balance of probability.

The court enters judgment in favour of the claimants and grants them prayers numbers 1, 2, and 3. Prayers number 4 and 5 are not tenable at this point and are disallowed.

61. Even though costs follow the event the court will exercise its discretion and order respective parties to meet their respective costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 3RD DAY OF DECEMBER, 2024.

ANNA NGIBUINI MWAURE

JUDGE

Order

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

