



**Kenya Union of Domestic Workers, Educational Institution Hospital
and Hospital Workers v Egerton Univeristy & another (Cause
E005 of 2020) [2023] KEELRC 346 (KLR) (9 February 2023) (Judgment)**

Neutral citation: [2023] KEELRC 346 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE E005 OF 2020
HS WASILWA, J
FEBRUARY 9, 2023**

BETWEEN

**KENYA UNION OF DOMESTIC WORKERS, EDUCATIONAL INSTITUTION
HOSPITAL AND HOSPITAL WORKERS CLAIMANT**

AND

EGERTON UNIVERISTY 1ST RESPONDENT

ANDREW MAOGA ASANDE 2ND RESPONDENT

JUDGMENT

1. The Claimant Union instituted this claim against the Respondents complaining of an alleged withholding of Union dues. In the claim, it sought for the following reliefs;-
 - a. That the 1st Respondent be and is hereby ordered to pay the Claimant within 7 days of the judgement the outstanding sum of Kshs 2,818, 600.
 - b. The 1st and 2nd Respondents be and are hereby jointly ordered to pay the Claimant within 7 days of the judgement the outstanding sum of Kshs 2,818,600.
 - c. The 1st Respondent be and is hereby ordered to pay the Claimant within 7 days of the judgement all other accrued union dues which it has not remitted to the Claimant into the Claimant's Union Gazette Bank Account being; Barclays Bank Account number xxxx, Queensway House Branch, Nairobi.
 - d. Cost of this suit.
 - e. Interest in (i) & (iv) above at court rates.



- f. Any other or further relief that this Honourable Court may deem just and fit to award in the circumstances.
2. The Claimant is a trade Union registered under the [Labour Relations Act](#). That they represent interalia non-teaching staff in all Educational institutions managed by the University council of management and Board and management. The 1st Respondent is public University Governed under the Public [Universities Act](#) and the 2nd Respondent is a shop steward and the 1st Respondent's employee.
 3. It is stated that the Claimant has an active Collective Bargaining Agreement with the 1st Respondent and they have been deducting and remitting union dues to the Claimant every month and deposited into the Claimant gazette Bank Account. However sometimes in 2018 the Respondents worked in cahoots and withheld the union dues for several months running from 2018 to 2021.
 4. It is the Claimant's case that the Respondent failed to remit union dues for the month of February to December, 2018 amounting to Kshs 1,448,400; April to June, 2020 of Kshs 362,700 & August, 2020 of Kshs 120,900; November, 2019 to August, 2020 of Kshs 886,600. All adding up to Kshs 2,818,600.
 5. The Claimant states that the actions by the 1st Respondent is in total violation of the labour laws currently in force. Further that the Claimant is exposed to serious financial crisis and difficulties which is tantamount to unfair labour practices. Also that the Claimant is unable to pay its employees, maintain its offices and generally carry out its mandate as a trade Union.
 6. It is contended that the actions of the Respondents are in violation of section 50 of the [Labour Relations Act](#) which actions must be stopped by this Court.
 7. During hearing, the Claimant summoned its 3rd Secretary General, Charles Njoroge, who testified as CW-1 and adopted his witness statement of September 30, 2022 and produced the list of documents which were marked as Exhibit 1-5 respectively.
 8. Upon cross examination, the witness testified that he is the acting Secretary General and has been authorized by the Claimant's official to testify on its behalf. It was his testimony that Nakuru Branch is the only branch that is fully constituted. He testified that they measure the productivity of their branches by remittance of union dues. He admitted that the 2nd Respondent was a shop steward but stated that the cheques were only collected by the Branch secretary and sent to its head office in Nairobi. He denied authorizing the 2nd Respondent to collect the cheques on their behalf. He denounced the payment made on 24.8.2018 and the made on 21.9.2018 and averred that the money was not deposited in the Union Bank account.
 9. Upon further cross examination, he testified that the Union reported the issue to the head office vide the letter of March 15, 2018 and the employer was reminded to remit the union dues to the Union. Also that the letter of March 27, 2019 emphasized that the branch secretary was the only one allowed to collect Union dues. He also stated that the Respondent admitted owing the Claimant Kshs 483,000.

1st Respondent's Case.

10. The 1st Respondent entered appearance and filed a defence to claim on the July 26, 2022 denying the allegation of withholding the Claimant's dues. It is averred that the 2nd Respondent was an employee of the 1st Respondent and the Claimant's Shop steward who was trusted by the Claimant to collect union dues on their behalf.
11. The 1st Respondent avers that, it has always deducted and remitted all the Unions dues when they fell due. The procedure was that the 1st Respondent wrote a cheque to the Claimant that was delivered by



the 2nd Respondent at the Claimant branch offices situated at Nakuru Town. The practice was for the union to send two representatives to the 1st Respondent's offices to collect the said cheques who could countersign against each cheque collected.

12. The 1st Respondent therefore maintained that they have remitted all Union dues and they do not owe the Claimant any money.
13. During hearing Janet Bii, the 1st Respondent's legal officer testified as RW-1. She stated that the Claimant has an active CBA with the Respondent herein. It was her testimony that the Respondent always dealt with the Claimant's branch office and the person in charge was Mr Kiget and a lady called Susan. That the cheques were collected by the Branch official and at times Andrew Maoga collected for them which was never an issue with the Claimant. She testified that Mr Kiget in the letter of March 27, 2019 confirmed that some cheques delivered by the 2nd Respondent had been cleared. She added that they remitted all dues save for 483,000 admitted. She vehemently denied working in cahoots with the 2nd Respondent and stated that the 2nd Respondent retired in December, 2020.
14. Upon cross examination, the witness testified that they were aware of the gazetted bank account and that they were supposed to remit union dues to the said account unless otherwise authorized by the Claimant union. She admitted that there was not letter of authority giving the 1st Respondent green light to allow the 2nd Respondent collect dues on behalf of the Claimant. It was her case that between February and December, 2018 they did not deposit any money in the Claimant's bank account but that the Claimant's Branch officials collected the said dues from them. He also stated that they paid dues for August to November, 2019 but they were collected by the Branch officials not deposited in the Claimant's gazette account. She maintained that the outstanding sum owing is Kshs 483,000.
15. On re-examination she testified that it was a practice for either Union officials or shop stewards to collect the cheque and deliver to the Union. She testified that she was not aware of the Bank account to deposit the dues and that she learnt of the same when they were served with the pleadings in this case. She reiterated that the 1st Respondent did not collude with the 2nd Respondent to defraud the Claimant.

Claimant's Submissions.

16. The Claimant submitted that the Respondents worked in Cahoots to withhold its Union dues which they are entitled to by dint of section 48 and 50 of the *Labour Relations Act*. It was argued that the 1st Respondent was well aware of the gazette bank account where Union dues were to be remitted but the 1st Respondent acted otherwise and allowed unauthorized person to collect the Union dues, an act which led to loss of the Claimant's dues. It was submitted that based on the evidence before Court the scales of justice tilt in favour of the Claimant as it has proved its claim to the required standard. In this they relied on the case of *Miller v Minister of Pension* [1947] 2 ALL ER page 372 where Denning, J discussing the burden of proof held that:-

“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a Criminal Case. If the evidence is such that the tribunal can say; we think it more probable than not, the burden is discharged, but if the probabilities are equal it is not. Thus, proof on a balance of probabilities means a win, however narrow; a draw is not enough. So in any case in which the tribunal cannot decide one way or the other which evidence to accept, where both parties explanation save equally (un) convincing, the party bearing the burden of proof will lose, because the requisite standard will not have been attained.”



17. It was submitted that the case as against the 2nd Respondent was uncontroverted because despite being served with the claim, he never entered appearance, neither did he file a defence as such the Court should rule against him. In this they relied on the case of *Motex Knitwear Limited v Gopitex Knitwear Mills Limited* [2009] eKLR where the Court relied on the case of *Autar Singh Babra & another v Raju Govindji*, HCCC No 548 of 1998 (unreported) where the Hon Justice Mbaluto stated at page 4 paragraph 4 as follows:

“Although the Defendant has denied liability in an amended Defence and counterclaim, no witness was called to give evidence on his behalf. That means that not only does the Defence rendered by the 1st Plaintiff in support of the Plaintiff’s case stand unchallenged but also that the claims made by the Defendant in his Defence and Counter-claim are unsubstantiated. In the circumstances, the Counter-claim must fail.”

18. It was submitted that section 50 (9) of the *Labour Relations Act* bars any organization from remitting union dues to any account other than the one designated. Therefore that the failure to remit the Union dues or allowing the same be collected by unauthorized person , if at all, is in violation of the express provisions of the law and the Respondent should be condemn to pay the said Union dues.

19. There were no submissions for either of the Respondents at the time of drafting this judgement.

20. I have examined the evidence and submissions of the parties herein. The Claimants aver that the respondents didn’t remit the union dues for the month of February to December 2018 amounting to 144,400/=, April to June 2020 of Kshs 362,700/= and August 2020 of 120,900/= November 2019 to August 2020 of 886,600 all totaling Kshs 2,818,600/=.

21. The respondents contend that these amounts were remitted through the Claimants branch organizing secretary who failed to give the said cheques to the Claimants.

22. In reference to this contention, I refer to section 50 of the *Labour Relations Act, 2007* which states as follows;

“50.

- (1) Any amount deducted in accordance with the provisions of this Part shall be paid into the designated trade union, or employers’ organisation account within ten days of the deduction being made.
- (2) The Minister may revoke or suspend a notice issued in accordance with of this Part if the Minister has reason to believe that—
 - (a) the order was obtained by misrepresentation or fraud;
 - (b) the money is not being paid into the designated account; or
 - (c) the money is being used for a purpose other than the lawful trade union or federation activities.
- (3) No amount deducted from the wages of an employee in accordance of this Part may be recovered from the employer by that employee.



- (4) Any amount deducted from the wages of a member of a trade union by the member's employer in accordance with this section discharges the liability of the member to pay trade union dues.
- (5) An employer may set off against any sum payable to a trade union in accordance with this section, the amount of any money over paid by the employer into the account designated by the Minister.
- (6) No employer shall make a deduction from the wages of an employee for the purposes of making a payment to any trade union, except in accordance with the provisions of this Part.
- (7) A trade union or a trade union federation shall acknowledge receipt of any monies paid to it within fourteen days of receiving the money.
- (8) No employer shall—
 - (i) fail to comply with an order or a notice issued under this Part;
 - (ii) deduct any money and not pay it into the account designated in the notice issued by the Minister; or
 - (iii) pay money into an account other than the account designated in the notice issued by the Minister. (9) No person shall—
 - (i) request an employer to pay money deducted in accordance with this section into an account other than the account designated by the Minister in the notice; or
 - (ii) use any money deducted in accordance with this section for any purpose other than the lawful activities of a trade union or a trade union federation. (10) An employer or any person who contravenes the provisions of this section commits an offence.

23. Indeed the RW1 admitted that they knew that the amount was to be deposited in the Claimant's account but that this was never done.
24. They admitted that they had no authority to issue the cheque to a branch union official and this does not explain how the cheque was finally cleared from respondent's account to a different account other than that of the Claimant.
25. Section 50 (9) above is clear that no person shall request an employer to pay money deducted into any other account other than that designated by the minister.
26. The respondents having failed to demonstrate that the money was not paid into an account other than the designated one, they have not discharged their obligation to remit Union dues.
27. I therefore find the claimants claim is established and uncontroverted.
28. I therefore find for claimant as prayed and I enter judgment for the claimant to the tune of Kshs 2,818,600/= plus costs and interest at court rates with effect from the date of this judgment.



DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 9TH DAY OF FEBRUARY, 2023.

HON LADY JUSTICE HELLEN WASILWA

JUDGE

In the Presence of:

Masese for Respondent – present

Jaoko for Claimant – present

Court Assistant – Fred

