



**Kenya Union of Commercial, Food and Allied Workers v Endarasha Dairy
Farmers Co-operative Society Limited (Employment and Labour Relations
Cause E014 of 2020) [2023] KEELRC 1084 (KLR) (27 April 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1084 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E014 OF 2020
ON MAKAU, J
APRIL 27, 2023

BETWEEN

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

AND

**ENDARASHA DAIRY FARMERS CO-OPERATIVE SOCIETY
LIMITED RESPONDENT**

JUDGMENT

1. The claimant is a registered trade union while the respondent is a registered Co-operative Society engaged in the business of buying milk from farmers. The respondent falls within the sector represented by the claimant.
2. The claimant avers that on 16th March 2019, it recruited into membership 16 unionisable employees of the respondent equaling 100% of the respondent's unionisable staff. It then forwarded check off forms to the respondent, authorizing the employer to deduct union dues and remit to the Gazetted accounts for the claimant and the central organization of Trade Unions (Kenya).
3. The respondent declined to deduct the union dues and the claimant lodged a trade dispute at the Ministry of Labour. A conciliator was appointed but the dispute was not resolved and it was referred to this court by a certificate issued on 20th August 2020.
4. The suit seeks the following reliefs:-
 - a. Declaration that the action by the respondent to refuse to adhere to the Gazette Notice of the Minister of labour is unlawful.



- b. An order that the respondent do pay union dues accumulating from 1st April 2019 to 30th November 2020 from their own funds and to the same as per Gazette Notice aforementioned deposit as ordered in the checkoff form.
 - c. An order that the respondent to deduct and remit union dues from their employees who are unionisable members from the date of judgment and to continue doing so on monthly basis.
 - d. Costs of the suit to the claimant.
5. The respondent has denied that the no persons recruited as members are employees of its Co-operative Society and averred that they are not its staff but its shareholders and seasonal workers. It further averred that Mr. David Muruga, James Nchugu, Nahashon Kariuki and Robert Kahiga have since left their seasonal employment and their whereabouts is unknown. Further, it averred that the following persons are shareholders-;
- Name Member No.
- John Ndegwa 1952
- Lawrence Thimba 2607
- Jackson Mwangi 2211
- Victor Mwai 3879
- Samuel Maina 3366
- Peter Karuku 4096
6. It averred that under Section 89 (1) (2) and (3) of the *Co-operative Societies Act*, the said six shareholders are not eligible to be employed by the respondent. Any contravention of the said provisions is an offence punishable by a fine of Kshs. 1,000,000 or imprisonment for 2 years or both plus an order for refund of the remuneration received.
 7. The respondent further avers that the remaining 6 persons recruited are its seasonal workers and therefore not eligible for deduction of union dues. They include Cyrus Kimani Wanjiru, Rose M. Wahome, Joyce Wanjiru Mugure, Irene Wanjiku Muthoni, Lydia Wachira and Beatrice G. Maina.
 8. It further averred that it is engaging the commission for co-operative Development for approval of its proposed terms and conditions of employment. It averred that under Rule 27 (2) of the Co-operative Societies Rules, all employees of a Co-operative Society are appointed in accordance with the terms and conditions of service approved by the commission. Further paragraph 36 (b) and (c) of its by laws provides that no expenditure shall be authorized by the committee unless it is approved by the Annual General Meeting.
 9. Finally it averred that it has not deliberately failed to comply with the claimant's demands but rather it has been prevented to do so by the law. Therefore it prayed for the suit to be dismissed with costs.

Evidence

10. The claimant relied on the written statement of its branch Secretary, Mr. Erastus Mututo dated 11th December 2020. In brief the witness stated that the claimant recruited its unionisable employees of the respondent as members representing 95% of the unionisable staff. On 9th April 2019 it forwarded check forms duly signed by the said employees for deduction and remittance of union dues. The forms bore Gazette Notice by the C.S Labour authorizing the deduction and remittance of union dues to the claimant and COTU (K) in specified bank accounts where to remit the union dues.



11. The respondent defied the demand for the union dues and the dispute was referred to the labour minister for conciliation. However the matter was not resolved hence this suit. The Union dues are deducted from the employee and not the employer's money. He prayed for the reliefs sought to be granted.
12. The respondent relied on a written statement by its members Mr. Simon Chege dated 10th May 2022 as its evidence in brief. The witness reiterated the facts set out in the statement of defence namely that 4 of the recruited members have since left employment. That 6 of them are not employees but its shareholders and that the remaining 6 are seasonal staff whose terms of service must be authorized by commissioner for Cooperative Development under Rule 27 (2) of Cooperative Societies Rules.
13. In view of the above matters, the witnesses stated that the claimant validly recruited only 6 members equaling to 37% of the total numbers recruited by the claimants. Therefore he prayed for the suit to be dismissed with costs.

Submissions

14. Only the respondent filed submissions on 16th November, 2022 which basically reiterates the averments made in the defence and the aforementioned witness statement. It was reiterated that out of the 16 persons recruited, 4 had left employment, 6 were shareholders who work for the respondent seasonally leaving only 6 ordinary seasonal employees. It further submitted that the C.S Labour and Registrar of Trade Unions have no powers to compel shareholders to join a trade union.
15. Finally, it was submitted that the claimant's claim is not sincere and it is tainted with dishonesty by listing as members persons who are strangers to the respondent. Reliance was placed on the cause of Kenya Engineering Workers v Esquire Wholesalers [2021]eKLR, where the court held that a trade Union seeking union dues must prove by evidence that it has recruited into membership the employees on account of whom union dues are claimed.

Determination

16. The main issues for determination are:-
 - a. Whether the claimant has recruited into membership from the respondent's unionisable employees.
 - b. If the answer to (a) above is in the affirmative, whether the respondent should deduct and remit union dues from recruited employees.
 - c. If the answer to (b) is in the affirmative whether the deduction of the union dues should be backdated to 1st April 2019.

Membership

17. The claimant has produced as exhibit copy of the Check Off Form duly signed by the persons recruited as members. The members have duly signed against their respective names to authorize deduction of trade union dues from their wages. The respondent has admitted both in its pleadings witness statements and written submissions, that the persons in said check off forms are people who worked for her but on seasonal basis. It has maintained that 4 of them left employment while 6 of them are shareholders.
18. No documentary evidence was produced to prove that the said 4 employees are seasonal employees, that 4 of them have left employment. Even if they left, there are still members of the union working



for the respondent. It was alleged that the employees are seasonal but logically, milk business is not seasonal. It goes round the year. Consequently, I find and hold that the claimant has proved by evidence that it recruited into members unionisable employees of the respondent.

Deduction of union dues

19. Trade Union dues basically refers to membership subscription fees paid regularly by members to their trade union. Section 48 of the *Labour Relations Act* entitles a trade union to union dues after obtaining an order for the same by the C.S Labour. In this case the claimant has produced a copy of an order from the C.S Labour published in Gazette notice No. 11153, on 26th July, 2013 and stating as follows in part-;

“(a)

(b) Order every employer who employs not less than five (5) members of the Kenya Union of Commercial food and allied workers,

i. to deduct every month the sum specified in the schedule in respect of trade union dues from wages of his/her employees who acknowledge membership of this trade union....”

20. The respondent has acknowledged that all the 16 employees recruited by the claimant were working for it and produce no evidence to prove that they left employment. Therefore, I find and hold that the respondent is liable to deduct union dues from wages of the 16 members of the claimant who are working for it and remit to the claimant.

Backdated deductions

21. Trade union dues is deducted from employees and not from the employer. No evidence has been produced by the claimant to prove that the respondent deducted any trade union dues from 1st April 2019 to date. Therefore the deduction and payment of trade dues from the 16 union members shall commence from the date of this judgment.

22. In conclusion I enter judgment for the claimant in the following terms:-

a. Declaration be and is hereby made that the failure by the respondent to comply with the order by the C.S Labour in the said Gazette Notice is unlawful.

b. An order be and is hereby made compelling the respondent to deduct and remit union dues from the members of the claimant who are employed by it as per the order by the minister in the gazette notice No.11153 of 26th July, 2013.

c. The respondent is further condemned to pay costs of the suit.

Dated, signed and delivered at Nyeri this 27th day of April, 2023.

onesmus n makau

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 April 2020, this judgment has been delivered to the parties online with their consent, the parties having waived compliance



with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N. MAKAU

JUDGE

