



REPUBLIC OF KENYA



KENYA LAW
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Banking Insurance & Finance Union v Rafiki Microfinance Bank (Cause E733 of 2022) [2023] KEELRC 970 (KLR) (25 April 2023) (Judgment)

Neutral citation: [2023] KEELRC 970 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E733 OF 2022
MA ONYANGO, J
APRIL 25, 2023

BETWEEN
BANKING INSURANCE & FINANCE UNION CLAIMANT
AND
RAFIKI MICROFINANCE BANK RESPONDENT

JUDGMENT

1. The claimant is a trade union registered under the [Labour Relations Act](#) to represent employees in banks and other financial institutions.
2. The respondent is a registered micro-finance bank conducting its business within the Republic of Kenya. The claimant therefore has mandate to represent employees of the respondent.
3. It is not in contest that sometime in July and August 2016 the claimant recruited a total of one hundred and four (104) employees of the Respondent. It is the Claimant's case that in August 2016, soon after the recruitment exercise, it received a total of 40 letters of resignation from the newly recruited members.
4. On 16th August 2016 the Claimant sent checkoff forms (Form S of the [Labour Relations Act](#)) to the Respondent requiring the Respondent to deduct union dues from the recruited employees and remit to the union's designated account in accordance with section 48 of the [Act](#).
5. It is the Claimants averment that on the 7th of September 2016 the Respondent served the Claimant union with a banker's cheque for Kenya Shillings One Thousand as union dues for the month 01 August 2016. Further, on the 7th of October 2016 the Respondent again served the Claimant union with a banker's cheque for Kenya Shillings Two Hundred and fifty as union dues for the month of September 2016.



6. On the 9th of November 2016 the Respondent sent to the Claimant with banker's cheque for Kenya Shillings Two Hundred and Fifty as union dues for the month of October 2016.
7. It is the Claimant's case that although only 40 of the members it recruited from the employees of the Respondent resigned from its membership, the Respondent has refused and or failed to remit union dues from the remaining sixty four members of the Claimant.
8. A meeting called by the Claimant to discuss and amicably resolve the dispute did not yield positive results and the Claimant reported a dispute to the Ministry of Labour.
9. The Cabinet Secretary accepted the dispute and appointed Mr. Ndiho as conciliator. Mr. J. Ndiho was shortly thereafter left the Ministry before concluding the matter. The Ministry did not appoint any other conciliator leaving the Claimant with no alternative but to file the dispute in court.
10. In the memorandum of claim dated 12th October, 2022 and amended on 6th December, 2022, the Claimant seeks the following remedies.
 - a. Declaration from the Honourable court that the claimant is entitled to union dues in respect of the sixty four (64) unionisable employees who had been recruited to the union
 - b. There be an order directing the Respondent to effect payments of unremitted union dues from the sixty-four (64) unionisable employees, from its own accounts, by crossed cheque into the applicant/claimant's union account No 01-020-741448-00 at Standard Chartered Bank Limited Harambee Avenue Branch accordance with Gazette Notice No. 516 of 23rd January 2009.
 - c. In the alternative there be an order directing the Respondent to effect payments of unremitted union dues from the seven (7) unionisable employees, who had not recanted union membership as at 16th September ——— 2016 from its own accounts, by crossed cheque into the applicant/claimant's union account No 01-020-741448-00 at Standard Chartered Bank Limited Harambee Avenue Branch in accordance with Gazette Notice No.516 of 23rd January 2009.
 - d. Costs to the claimant union
 - e. Any other relief the Honourable court deems just to grant
11. Together with the memorandum of claim the claimant filed a notice of motion of even date in which it sought the following orders-
 - a. Spent;
 - b. That there be an order directing the Respondent to immediately or within 7 days of an order herein to deduct and remit union dues in respect of sixty-four (64) unionisable employees, of the Respondent;
 - c. That there be an order directing the Respondent to effect payments by crossed cheque into the Applicant/claimant's union account No 01-020-741448-00 at Standard Chartered Bank Limited Harambee Avenue Branch in accordance with Gazette Notice No 516 of 2009 dated 23/1/2009;
 - d. That costs of this application be in the cause.



12. The Respondent in response to both the claim and application filed a response to memorandum of claim dated 9th November, 2022 and a replying affidavit of Judith Ndunge, the Respondent's Head of Talent and Organisation Development.
13. The Respondent denied that it failed to remit union dues as alleged by the Claimant and states that it complied with the check off forms with the exception of the employees who resigned from membership of the Claimant and those who left the Respondent's employment. The Respondent also filed a witness statement of Judith Ndunge in which she reiterates the averments in her replying affidavit and the Response to Memorandum of Claim.
14. The Respondent avers that 97 out of the 104 employees recruited by the Claimant resigned in July and August 2016. That 9 other employees who had been recruited by the Claimant left the Respondent's employment during the same period leaving the Claimant with less than 5 members which is the threshold for check off deductions under Gazette Notice Number 516 of 2009 on deduction of Union dues from the Claimant.
15. The Respondent states that it nevertheless continued to deduct and remit union dues to the Claimant's designated bank account but the number of the Claimant's members continued to reduce until October, 2016 when only one employee remained in the membership of the Claimant which the Respondent nevertheless continued to deduct and remit to the Claimant.
16. The Respondent avers that on 16th August 2016 it received check off forms for 4 other employees which was however accompanied with a letter seeking deduction and remittance of union dues for 104 employees. That when this was not forthcoming from the Respondent the Claimant reported a trade dispute which the Respondent willingly participated in until sometime in 2018 when the conciliation process collapsed.

Analysis and Determination

17. Upon considering the prayers sought in both the claim and application the court directed that the parties dispose of the two together by way of written submission.
18. I have considered the pleadings and submissions filed by the parties and it is evident that parties are in agreement that the Claimant is the relevant union to represent the employees of the Respondent. Parties are also in agreement that the claimant recruited a total of 104 of the Respondent's employees in July and August 2016.
19. The parties however disagree on the following issues which therefore fall for determination by this court-
 1. Whether the number of employees who resigned from the claimant's membership were 40 as alleged by the Claimant or 97 as contended by the Respondent; and,
 2. Whether the claimant is entitled to the orders sought in the application and claim.
Number of employees who resigned from membership of the claimant
20. According to the claimant, it received 40 letters of resignation from the 104 employees it recruited from among the Respondent's employees. The Respondent however insists that a total of 97 employees resigned from membership of the claimant and 9 others left its employment leaving the Claimant with only one (1) member.
21. Section 48 (3) and (5) of the *Labour Relations Act* provides for deduction and remittance of Union dues as follows-



- (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.
- (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.
22. Section 48(6), (7) and (8) of the *Act* provide for resignation from union membership as follows-
- (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
23. It is evident from the record that the claimant received copies of 40 resignations while the Respondent has adduced copies of 80 letters from its employees who resigned from membership of the Claimant. As is provided in section 48(6) of the *Labour Relations Act*, an employer cannot deduct union dues from an employee who has notified the employer of his/her resignation from membership of the union.
24. The employer is however under obligation to forward a copy of any notice of resignation it receives from its employees to the trade union as provided in section 48(8). It would appear that in this case the Respondent did not do so hence the discrepancy in the number of resignations received by the Claimant from its members who resigned from its membership and those received by the Respondent.
25. This discrepancy in numbers does not however, change the fact that the employees resigned from membership of the Claimant and that the Respondent was therefore not able to deduct and remit union dues from the employees who resigned.
26. I am satisfied from the evidence on record that the Respondent deducted and remitted all union dues that it was obligated by law to do. From the foregoing I find that the claimant has not proved its case against the Respondent and is therefore not entitled to any of the prayers sought in both the memorandum of claim and notice of motion filed therewith.
27. The result is that the claim fails and is accordingly dismissed in its entirety, with no orders for costs.

DATED AND DELIVERED VIRTUALLY IN ELDORET THIS 25TH DAY OF APRIL 2023.

MAUREEN ONYANGO

JUDGE

