



**Kenya National Union of Nurses v Nyabondo Mission Hospital (Cause E067 of 2021) [2023] KEELRC 1955 (KLR) (31 July 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1955 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**  
**CAUSE E067 OF 2021**  
**CN BAARI, J**  
**JULY 31, 2023**

**BETWEEN**  
**KENYA NATIONAL UNION OF NURSES ..... CLAIMANT**  
**AND**  
**NYABONDO MISSION HOSPITAL ..... RESPONDENT**

**JUDGMENT**

1. The Claimant in a statement of claim filed on 29<sup>th</sup> September, 2021, seeks the following orders against the Respondent: -
  - i. An order directing the Respondent to pay from its own funds a sum of Kshs.182,000 through A/C No.xxxx, being unremitted union dues plus any other amount accruing up to the date of Judgment herein.
  - ii. An order directing the Respondent to sign a Recognition Agreement with the Claimant within 14 days of Judgment herein.
  - iii. Costs of this suit.
2. The Respondent though served, did not participate in the suit. The suit thus proceeded as being undefended.
3. The claim was prosecuted through written submissions and submissions were received from the Claimant.

**The Claimant's Case**

4. It is the Claimant's case that being a duly registered trade union in the sector of Nursing within the health segment of the economy, it has the mandate to represent nurses at both levels of Government as well as in private and mission hospitals.



5. The Claimant states that between November, 2020, and February, 2021, it recruited 29 out of a possible 29 Nurses employed by the Respondent (Nyabondo Mission Hospital) through signing of form ‘S’ commonly known as “Check Off” forms.
6. The Claimant further states that it forwarded the duly signed check off forms through a forwarding letter dated 23<sup>rd</sup> November, 2020, and the same were duly received by the Respondent on 7<sup>th</sup> day of December, 2020, by stamping on the letter, and on the front of each and every form ‘S’ submitted.
7. It is the Claimant’s case that on 23<sup>rd</sup> November, 2020, it wrote to the Respondent forwarding a draft Recognition Agreement for consideration and signing, and which was received on 7<sup>th</sup> December, 2020, by way of stamping and signing on its copy.
8. It is its case that proper information was made available to the Respondent in respect of the Account Number and bank which trade union dues could be remitted to.
9. The Claimant states that it has produced evidence of the Minister’s Legal Notice No. 161 of 2021, authorizing deduction of union dues in respect of the Claimant members.
10. The Claimant further states that following the refusal by the Respondent to deduct trade union dues, its refusal to sign a Recognition Agreement and refusal to respond to correspondence, the Claimant reported a Trade Dispute to the Cabinet Secretary for labour on 16<sup>th</sup> day of February, 2021.
11. It is the Claimant’s case that the Cabinet Secretary for labour through a letter dated 11<sup>th</sup> March, 2021, appointed Mr. Charles Gondosio of Kisumu Labour Office to facilitate conciliation process with a view of reaching an amicable solution.
12. It is its case that both parties attended the process of conciliation where the Respondent’s only response on why it could not process the recognition, was for lack of a hospital board and that such a decision could only be made by the board.
13. The Claimant states that the Conciliator in his recommendation found that the Claimant had by law met the threshold of getting recognition from the Respondent.
14. That the conciliator’s recommendation notwithstanding, the Respondent refused to recognize the Claimant and make deductions of dues from its membership.

#### **The Claimant’s submissions**

15. It is the submission of the Claimant that by refusing to deduct and remit trade union dues, the Respondent is in contravention of Section 4 of the [Labour Relations Act](#).
16. It is their submission that the rights of its members who are in the employment of the Respondent stand compromised by the Respondent’s failure to deduct the union dues and remit to the Claimant.
17. The Claimant submits that for reason that the Minister under Legal Notice No. 161 of 2021, approved deductions in respect of the Claimant’s members, the Respondent in failing to deduct and remit the deductions, has contravened Section 48 of the [Labour Relations Act](#) together with the Minister’s Legal Notice.
18. The Claimant submits that the Respondent has contravened Section 54(1) and (3) of the [Labour Relations Act](#) by refusing to sign a Recognition Agreement.



19. The Claimant submits that it deserves the signing of Recognition Agreement with the Respondent after recruiting 29 Nurses out of a possible 29 Nurses in the Employment of the Respondent which translates to 100% membership.
20. It is further the submission of the Claimant that the Respondent has violated the provisions of Articles 2, 3, 8 and 11 of the [ILO Conventions No. 87 on freedom of association and protection of the rights to organize](#) by failing to deduct and remit union dues and to sign a Recognition Agreement.
21. It is its submission that the Respondent has infringed on the Claimant's and its members' rights under Article 36 and 41 of the [Constitution](#) by failing to deduct and remit trade union dues, and to sign a Recognition Agreement.
22. The Claimant further submits that there was proper recruitment of members, hence the Claimant is entitled to deduction and remittance of trade union dues from the month following the month the check off forms were submitted to the Respondent.
23. It is the Claimant's position that like any other statutory deductions, trade union dues are a lawful deduction authorized by the Cabinet Secretary through the Legal Notice No. 161 of 2021, and further sanctioned by the employees through signing of form 'S' to signify their membership.
24. The Claimant finally submits that it is entitled to the payment of arrears prayed, and including up to the date of determination of the suit.

### **Analysis and Determination**

25. I have considered the pleadings and the Claimant's submission. The issues for determination are: -
  - i. Whether the Respondent should be compelled to recognize the Claimant
  - ii. Whether the Respondent should deduct and remit union dues on behalf of the Claimant from her employees.
  - iii. Who should bear the costs of the suit.

### **Whether the Respondent should be compelled to recognize the Claimant**

26. Section 54 of the [Labour Relations Act](#), 2007, provides thus on recognition: -
  - (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
  - (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.
  - (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.”
27. The Claimant’s case is that it has recruited 29 out of 29 Nurses into its membership from the service of the Respondent. Translated, this is 100% of the total number of the Nurses in the Respondent’s employ. This position is confirmed by the Form Ss exhibited in evidence before this Court.
28. By law, all a union needs to show is that it has recruited a simple majority (51%) of an employer’s unionisable employees for the obligation on the employer to recognize to kick in.
29. The Claimant herein, has demonstrated that it has recruited 100% of the Respondent’s unionisable employees into its membership, which then goes to say that the Respondent has no option but to recognize the Claimant union. Abuodha J in *Kenya National Union of Nurses v Friends Lugulu Mission Hospital* [2021] eKLR held thus on recognition: -
- “...the only precondition is the recruitment of simple majority of unionisable employees in the organization. Once this condition is met recognition is mandatory.”
30. Further, the failure by the Respondent to recognize the Claimant, has already been conciliated and the Conciliator recommended that the Claimant be recognized by the Respondent.
31. I find and hold that having met the legal threshold for recognition, the Respondent is bound to recognize the Claimant union.

**Whether the Respondent should deduct and remit union dues on behalf of the Claimant from her employees.**

32. Section 48 of the *Labour Relations Act, 2007* provides as follows in respect of 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.”
33. The foregoing provisions expressly stipulate the conditions that a Union must meet for an employer to be under obligation to deduct and remit Union dues from its employees’ salaries.



34. The first requirement is for the Union to get a ministerial order authorizing it to request an employer to deduct Union dues. The Applicant herein has produced the ministerial order being Legal Notice No.161 of 2021, by which the Minister for Labour had authorized the deduction of Union dues on behalf of the Applicant.
35. The second requirement is for the Trade Union to serve notice in Form S as stipulated under the Third Schedule to the Act, and which should be signed by the employees in respect of whom the employer is required to make a deduction.
36. The Claimant has exhibited Form S duly signed and delivered to the Respondent, as authority for the deductions in fulfilment of this legal requirement. In *Banking Insurance Finance Union(K) v. Kenya Revenue Authority* [2018] eKLR, the Court of Appeal held that the proof of membership to a Union is submission of check-off forms duly signed by the concerned employees.
37. The Respondent's employees/nurses have neither denied joining the Claimant's Union nor withheld their consent for deduction of the Union dues.
38. It is evident to this Court that the Claimant has met the threshold for the deduction of Union dues by the Respondent. The Respondent is by law duty bound to deduct Union dues and remit the same to the Claimant.
39. In *Kenya Union of Hair and Beauty Salon Workers v Styled Industries Ltd and Another*[2020] eKLR, it was held that an employer should deduct Union dues from employees who have signed the check-off forms once the same have been served upon the employer.
40. Further, as correctly submitted by the Claimant, the refusal to recognize and deduct and remit union dues, is a violation of the claimant's members rights enshrined in Articles 36 and 41 of the *Constitution*, and Articles 2, 3, 8 and 11 of the *ILO Conventions No. 87 on freedom of association and protection of the rights to organize*.
41. On whether the Respondent should be compelled to pay union dues from its own funds, I am persuaded by the holding of Mbaru J in the case of *Bifu -V- Bora Sacco Society* (2016) eKLR where she held that where union dues are required to be deducted and remitted to a Trade Union and such dues are not deducted, the employer shall pay such dues from its own account. Such uncollected dues cannot be received from the employee as the employer is at fault.
42. I concluded by holding that the Claimant's suit is merited and orders granted as follows: -
  - i. That the Respondent be and is hereby ordered to recognize the Claimant union.
  - ii. An order be and is hereby issued directing the Respondent to pay from its own funds a sum of Kshs.182,000 through A/C No.011203095155200, being unremitted union dues plus any other amount accruing up to the date of this Judgment.
  - iii. That an order be and is hereby issued directing the Respondent to henceforth commence deduction and remittance of Union dues from the members of the Claimant as submitted in Form 'S' and as authorized by the Minister for Labour vide Legal Notice No. 161 of 2021.
  - iv. I make no orders on costs as the Respondent did not defend the suit.
43. Judgment of the Court.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 31ST DAY OF JULY, 2023.**



**CHRISTINE N. BAARI**

**JUDGE**

**Appearance:**

Mr. Rutere present for the Claimant

N/A for the Respondent

Ms.Christine Omolo – C/A

