



Transport Workers Union (K) v Saudi Arabian Airlines (Employment and Labour Relations Cause 795 of 2019) [2023] KEELRC 2068 (KLR) (4 August 2023) (Judgment)

Neutral citation: [2023] KEELRC 2068 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 795 OF 2019**

**AN MWAURE, J
AUGUST 4, 2023**

BETWEEN
TRANSPORT WORKERS UNION (K) CLAIMANT
AND
SAUDI ARABIAN AIRLINES RESPONDENT

JUDGMENT

1. The claimant filed a memorandum of claim dated 20th November 2019.

The claimant's case

2. The claimant is a transport workers union and they represent workers of transport and allied sector. They state that the Cabinet Secretary for labour and social service issued claimant an agency notice no 130 of 26th June 2018 applicable from July 2018 for deductions to commence within 30 days of receiving the order. The dues were to be remitted to the union's accounts no 094-2830238 held at Barclays Bank of Kenya Limited Queensway Branch.
3. The order was according to the claimant served on the respondent on 20th July 2018 by a letter dated 5th July 2018. The deduction period terminated on 20th August 2018 and remittance period ended on 27th August 2018.
4. The union says they wrote to the respondent demanding the remittance on 29th October 2018 and 10th December 20-18 but the respondent did not respond and has neither deducted nor remitted the dues amounting to kshs 504,000 between august 2018 to November 2019.
5. The claimant submits that agency fee is a deduction made from unionisable employees wages covered under collective bargaining agreement but employer is an agent to implement the order.



6. He further states the claimants employees were duped to resign from the union in October 2018 even though the y had a collective bargaining agreement and they were still in employment.
7. The claimant states the employer has contravened section 49(5) of the *Labour Relations Act* 2007 which provide:

A member of trade union covered by a collective agreement contemplated by subsection (1) who resigns from the union, is immediately liable to have an agency fee deducted from his wages in accordance with this section.
8. The claimant says neither the employee nor the respondent has objected to paying the agency fee but respondent has refused to settle the same.
9. The claimant prays inter alia to be declared the only legally mandated union to represent claimant's employees to collect their agency fees as per CBA registered on 10th June 2014.

Respondent's response

10. The respondent witness Agnes Wairimu by her further witness statement dated 19th March 2023 and she avers the collective bargaining agreement purported to have been signed by Abdullahi Alkuwaivi country manager of Saudi Arabian airline was fabricated and was false. She said the document was allegedly dated 27th January 2014.
11. She says that as at January 2005 there was no recognition agreement signed by the respondent with the claimant. The witness says she is the duty officer administration with the respondent.
12. In her first witness statement dated 28th February 2023 states there is no recognition agreement as per the ruling by Justice Radido delivered on 9th December 2019 and therefore this case is res judicata.
13. She also says that the employees of the respondent voluntarily signed a consent in ELRC 389 of 2016 which provided that they resigned from the union with effect from 1/11/2016 and so they are not members of the claimant union.
14. Furthermore the members signed acceptance letters dated 21st December 2015 where they confirmed they had voluntarily accepted the salary review payment based on dollars and they further stated the arrangement substituted the CBA agreement on salary and allowance.

Submissions

15. The court considered the submissions by the claimant dated 20th March 2023 and the attendant authorities as well as the respondents submissions dated 13th April 2023.

Determination

16. The main issue for determination is whether the respondents averment that the claimant have a valid collective bargaining agreement is accurate.
17. The claimant's prayers to the court inter alia is to declare it is the only union mandated to represent the employees of the respondent who are members of the union. They also pray that the court orders the respondents to deduct and remit the union dues from their members as per the order of the minister for labour order 130 of 26th June 2018 and further prays the court to order the respondent to pay the dues they have failed to remit from their own account to the claimant.



18. The claimant insists they have a valid collective bargaining agreement with the respondent which was registered as RCA NO 131 of 2014 on 10th June 2014.
19. The court notes that on 9th December 2019 justice Radido pronounced himself and held there was no recognition agreement with the respondent. There is no evidence that the said ruling has been set aside or reviewed. The court is at pains to fathom why the claimant still insist they had a valid bargaining agreement when the court of competent jurisdiction had held otherwise.
20. The claimant further is relying on section 49 of the *Labour Relations Act* earlier on quoted. The same is repeated hereunder.

“A trade union that has concluded a collective agreement registered by the Industrial Court with an employer, group of employers or an employers’ organisation, setting terms and conditions of service for all unionisable employees covered by the agreement may request the Minister to issue an order requiring any employer bound by the collective agreement to deduct an agency fee from the wages of each unionisable employee covered by the collective agreement who is not a member of the trade union.”

21. The thing is in this law it refers to an employer’s unionisable member covered by the agreement are the ones who may have agency dues deducted as per order issued by the minister. This case even if the collective bargaining agreement was registered and which I have already pronounced myself as regards that the members resigned from the union voluntarily. The claimant says they were duped to resign but there is no evidence adduced to that effect. Indeed unless the claimant wants to allege the consent was forced their advocates even appended to it. The employees of the respondent therefore voluntarily ceased being members of the union. The consent is dated 20th October 2015.
22. The individual members further signed letters confirming they had agreed to receive their salaries in dollars and this was in substitution of CBA agreement on salary and allowances.
23. In that case the Ministers’ order refers to remittances of salary’s at two point five percentum of basic salary of each unionisable employee who is not a member of the respondent union but is covered by the respective bargaining agreement registered with employment and labour relations court and specified in the schedule. The respondent’s employees are no longer members of union and are not covered by any CBA.
24. Flowing from the above as the court has observed hereinbefore the employees of the respondent do not qualify to have agency moneys deducted thereto unless they revoke their consent referred above.
25. The claimant in their submissions have quoted authorities where respective courts recognised existence of a collective bargaining agreement. See *Union of Kenya Civil Servants vs Kenya Medical Research Institute & Another* (2021) eKLR and *Fidelis Omwamba Onsongo & 1648 Other vs Tailors & Textile workers union & Another* (2021) eKLR. In this case the court has held there is no collective bargaining agreement.
26. Flowing from the pleadings and the submissions hereto the court finds the claimants has not proved its claim and so the prayers prayed in the said claim being prayers a, b, c & D of the application are declined.
27. The court orders each party to meet their respective costs of this suit.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 4TH DAY OF AUGUST, 2023.



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

