



**Kenya Union of Sugar Plantation and Allied Workers v Busia Sugar Industry Limited (Employment and Labour Relations Cause 56 of 2021) [2023] KEELRC 3151 (KLR) (30 November 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3151 (KLR)

***FORMERLY KISUMU ELRC NO. 13 OF 2020***

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 56 OF 2021**

**JW KELI, J  
NOVEMBER 30, 2023**

**BETWEEN**

**KENYA UNION OF SUGAR PLANTATION AND ALLIED WORKERS ..... CLAIMANT**

**AND**

**BUSIA SUGAR INDUSTRY LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant is a trade union registered and recognised under the Laws of Kenya to represent workers in the sugar industry.
2. The Claimant on 13<sup>th</sup> February 2020 filed the Statement of Claim of even date supported by the Supporting Affidavit sworn on an even date by the Claimant's General Secretary, Mr. Francis B. Wangara. The Claimant filed an amended claim dated 11<sup>th</sup> June 2021 and received in Court on 14<sup>th</sup> June 2021.
3. The suit had been triggered by the alleged refusal by the Respondent to effect the check-off system of the claimant's unionisable members and refusal to hold a meeting with the Claimant to discuss and sign a Recognition Agreement. Vide the Amended Statement of Claim, the Claimant has prayed for the following reliefs:
  - a. That the respondent be ordered to immediately commence deduction of check-off dues from the salaries of the employees who have voluntarily signed the union forms acknowledging membership into the claimant union.



- b. That the respondent be ordered to remit the union dues so deducted under 2 above, into the claimant's union accounts as provided for in the minister's certificate as attached to the forms signed.
  - c. That the respondent, his agents or managers, and/or any other. Person(s) serving the interests of the respondent be restrained /stopped/restricted from threatening, victimizing, terminating, and/or dismissing any of its employees, shop stewards, or officials on account of joining union membership and/or and or participating in activities.
  - d. That the respondent, his agents(s) or manager(s), and /or any other person(s) serving the interests of the respondent be restrained /stopped from threatening, harassing, victimizing, termination and/or dismissing any of its employees, shop stewards or officials on account of this suit or proceedings.
  - e. That the Court be pleased to issue an order the recruitment is a continuous process and the respondent be restrained from interfering with the union future recruitment process and be ordered to accord branch officials and shop stewards access into the premises for recruitment and representative purposes.
  - f. That the Respondent be ordered to pay from its own resources a sum of money equivalent to union dues that the claimant would have earned as from November 2019 to date as a way of compensation for the loss of income as the claimant has indeed suffered.
  - g. That the respondent be ordered to meet and sign a recognition agreement with the claimant within 30 days.
  - h. Any other orders as the Court may wish in the interest of justice.
  - i. The costs of this suit be provided for by the respondent.
4. The Amended Statement of Claim was not accompanied by a verifying affidavit and the Claimant relied on its bundle of documents filed on 13<sup>th</sup> February 2020 with the Original Statement of Claim.
  5. On 26<sup>th</sup> August 2020, the Claimant filed the witness statements of Festus Ouma Wandera dated 7<sup>th</sup> March 2020; Wilfred O.Muroka dated 17<sup>th</sup> February 2020; Jacob Wanjala Were(undated), Allan Wemayasia Konah dated 16<sup>th</sup> July 2020, Dennis Obenzo dated 17<sup>th</sup> February 2020 Protus Wekesa Kasisi dated 17<sup>th</sup> February 2020; Israel Karakacha dated 4<sup>th</sup> March 2020, Joshua Opiyo Odiwuor (undated); Ibrahim Aruna Aramadhani dated 10<sup>th</sup> April 2020 and Zachary Owino Odongo dated 4<sup>th</sup> March 2020.
  6. The Respondent had entered appearance on 25<sup>th</sup> February 2020 through the firm of Ipapu P.Jackah & Co. and filed a Defence to the Memorandum of Claim dated 25<sup>th</sup> February 2020 and received in Court on the even date. The same was accompanied by a Replying affidavit by Caleb Anyula sworn on 25<sup>th</sup> February 2020 annexing the Respondent's documents. The Respondent on 30<sup>th</sup> June 2022 filed a Defence to the Amended Claim dated on even date.

### **Hearing and Evidence**

7. The Claimant's case was heard on the 24<sup>th</sup> April 2023 when Israel Karakacha (CW1) testified as the Claimant's first witness of fact. He adopted his witness statement filed on 26<sup>th</sup> August 2020 as his evidence and produced as his evidence the claimant's list of documents filed on 13<sup>th</sup> February 2020 (comprising various documents that were eventually adopted by the Court as the Claimant's Exhibits



- 1- 13). Additionally, he adopted the documents filed under the Notice of Motion application dated 4<sup>th</sup> May 2020 and adopted the amended claim dated 11<sup>th</sup> June 2021 as the claim.
8. Ibrahim Aruna Aramadhani(CW2) testified as the Claimant's second witness of fact. He adopted his witness statement dated 10<sup>th</sup> April 2020 as his evidence.
  9. Festus Ouma Wandera (CW3) testified as the Claimant's third witness of fact. He adopted his witness statement dated 7<sup>th</sup> March 2020 and filed in Court on 26<sup>th</sup> August 2020 as his evidence.
  10. Jacob Wanjala Were (CW4) testified as the Claimant's fourth witness of fact. He adopted his undated witness statement filed on 26<sup>th</sup> August 2020 as his evidence. There was no cross-examination on CW4.
  11. All the other Witnesses were cross-examined by the Respondent's counsel, Mr. Ipupa.
  12. The Respondent's case was heard first on the same day, 24<sup>th</sup> April 2023, where its witness Caleb Anyula(DW1) testified on oath as the Respondent's witness of fact and adopted his Replying affidavit sworn on 25<sup>th</sup> February 2020 as defence evidence in chief. He continued his testimony on 24<sup>th</sup> July 2023. He was cross-examined by the Claimant's representative Mr. Akhonya.

### **Claimant's Case**

13. The claimant argues that it is a registered union that allows open membership as per its Constitution(Exh 1), for workers in the sugar industry aged 16 years and above. On diverse dates from October 2019 to January 2020, it recruited 244 out of the 395 workers employed by the Respondent into the Union's membership and the said workers acknowledged membership by signing the forms as required by Section 48 of the [Labour Relations Act](#), 2007(Exh-2 – Recruitment forms).
14. The claimant states that the said workers voluntarily and willingly volunteered to join the Claimant's membership under Articles 36 and 41 of [the Constitution](#) and Section 4 of the [Labour Relations Act](#).
15. The Claimant states that it sent the duly signed check-off forms to the Respondent to effect the union deductions from the employees' salaries and remit to the union as indicated in the Letters of Authorisation dated 13<sup>th</sup> November 2019, 21<sup>st</sup> January 2020 and 26<sup>th</sup> January 2020.
16. The Claimant states that in early 2019 when the respondent's management noticed that there was active recruitment into the union membership it commenced threats and terminated workers whom it perceived were spearheading the recruitment process.
17. The Claimant's General Secretary on learning of the Respondent's actions, on 11<sup>th</sup> November 2019 wrote a caution to the Respondent, but the Respondent failed to adhere to the right of employees to unionise.
18. The Claimant states that with the failure of the Respondent to heed to its General Secretary's letter, on 21<sup>st</sup> November 2019, it wrote and sent via email to the Respondent, a letter seeking to have a meeting with the Respondent(Exh-5). The claimant states that despite having received the email and even after an exchange of phone calls with the respondent's human resource manager, the Respondent did not respond and continued the intimidation of workers based on their union membership.
19. The Claimant on 28<sup>th</sup> November 2019 through its General Secretary sent two of its officials Bro John Ogutu (Dept G. secretary) and Bro. Jeremiah Akhonya( National Association Treasurer) to the respondent, where they met the Respondent's management and discussed the membership, and recognition issue, and cautioned the management to cease their intimidation.



20. The Claimant states that the Respondent retained its union membership forms together with the minister's certificate dated 13<sup>th</sup> November 2019 which authorises deductions, but refused to accept receipt and promised to get back to the Claimant in a month after consultations with its directors.
21. The Claimant states that it has on many occasions engaged the Respondent to adopt the recognition agreement but the Respondent is unwilling (Exh-8).
22. The Claimant states that on 20<sup>th</sup> January 2020, the respondent replied to the General Secretary's letter, maliciously claiming that the listed members were not its employees(Exh-8)which prompted the General Secretary to resend the notice of authorisation for deduction dated 21<sup>st</sup> January 2020 accompanied by the signed forms and a letter dated 21<sup>st</sup> January 2020 asking the Respondent to effect deductions which the Respondent has not effected(Exh-9).
23. The Claimant on 28<sup>th</sup> January 2020 wrote and sent via Email and G4S Courier a further letter cautioning the Respondent over its continued intimidation; and harassment of employees and forcing them to denounce their membership or lose their employment and yet the Respondent has never stopped to date(Exh-10).
24. Contemporaneously, on 28<sup>th</sup> January 2020, the Claimant sent to the Respondent another list of employees who had signed union membership and attached the notice dated 26<sup>th</sup> January 2020 authorising the Respondent to effect deductions(FBW 2c).
25. The Claimant further sent two other officials on 29<sup>th</sup> January 2020 to meet the Respondent's management to discuss issues on recognition and unionisation, but the Respondent refused to discuss any issues on recognition and thereafter did not cease the intimidation and harassment.
26. The claimant states that in recruiting the listed employees it complied with Section 48 of the *Labour Relations Act* (LRA)and its Constitution under Rule 3a and that *the Constitution* of Kenya allows the Claimant to recruit and unionise all workers who work for the Respondent and to curtail that contravenes the law.
27. The Claimant states that the Respondent's conduct amounts to unfair labour practice under Sections 4 and 5 of the LRA 2007 and Article 41 of *the Constitution* of Kenya by forcing and compelling employees to resign, withdraw, and give up their membership as a condition to maintaining their employment through signing forms(FBW12).
28. The Claimant states that the Respondent's action of refusing to deduct union dues and to sign the recognition agreement is geared at denying workers their right to enjoy their constitutional rights and freedoms under the ILO Convention 87 & 98; *the Constitution* Article 20(1)(2), 22,36,41 and 47 and Sections 4 and 5 of the *Labour Relations Act*.

### **The Respondent's Case**

29. The Respondent's case is that the Claimant did not recruit any of its employees into its membership but rather the purported recruitment was undertaken through a pseudo-recruitment exercise carried out by employees who had been engaged by the Respondent on contract and whose contracts had expired. That the said contracted employees had accessed and obtained the Respondent's employment register detail and passed the same to the claimant.
30. The Respondent states that its engagement of workers is geared towards advancement and expansion of growth and that the same is proportional to an individual worker's output and competence.



31. The respondent contends that the Claimant perjured itself by forging signatures without the consent of the respective employees as proof of membership and filing the present claim, and states that the said employees have since disassociated themselves with the Claimant's scheme(CA2).
32. The Respondent states that some of the alleged union members such as one Stephen Mula Siachire(Pg.4 of FBN-2a) who is the Public Relations Officer at the respondent are in senior management rank.
33. The Respondent states that termination letters issued by the company to any employees as alleged by the Claimant, do not relate to union membership but rather are based on the expiry of their contract terms.
34. The Respondent states that it cannot be held hostage by union politics even in the face of incompetence and unproductivity by workers.
35. The Respondent urges that the Claimant's prayer to access its premises for membership recruitment amounts to a breach of privacy as the Claimant can erect a billboard outside the Respondent's premises inviting members to join the union at their offices and not necessarily at the Respondent's premises.

### **Written Submissions**

36. The Court gave directions for the filing of written submissions after the hearing. The parties complied. The Claimant's written submissions were drawn by Jeremiah Ingalia Akhonya on behalf of the General Secretary dated 4<sup>th</sup> September 2023 and received in Court on 13<sup>th</sup> September 2023. The Respondent's written submissions were drawn by the firm of Ipapu P. Jackah & Co. Advocates and were dated 16<sup>th</sup> October 2023 and received in Court on 17<sup>th</sup> October 2023.

### **Determination**

#### **Issues for determination.**

37. The Claimant in their written submissions identified the following issues for determination: -
  - a. Deduction of union dues
  - b. Intimidation, threats, and victimisation
  - c. Recognition agreement
  - d. Submission on costs.
38. The Respondents in their written submissions identified the following issues for determination:-
  - a. Whether the Claimant has proved Locus standi to institute these proceedings.
  - b. Whether there was a recognition agreement between the parties herein.
  - c. Whether there is material evidence to enable the Court to arrive at a specific figure the Claimant is entitled to.
39. The Court having considered the issues addressed by the parties in their submissions and pleadings was of the considered opinion that the issues to be addressed in the determination of the dispute were as follows:-
  - a. Whether the Claimant has locus standi to bring the Claim



- b. Whether the claimant was entitled to the reliefs sought.

### **Whether the Claimant has locus standi to bring the Claim**

#### **Claimant's case and submissions**

40. The claimant is a registered union in the sugar and plantation allied workers and claims to be the sole representative labour organisation in the sugar industry. That the Respondent, Busia Sugar Industry Limited, is a sugar manufacturing company situated and operating in Busia County.
41. The claimant stated that on diverse dates from the month of October 2019 to January 2020 it recruited 244 employees of the Respondent to join the union and the employees acknowledged membership by signing forms as required by section 48 of the *Labour Relations Act*(LRA Act) 2007. The Claimant produced the notice to employer authorising deductions and the check off forms as C-exhibits 2a,2b and 2c.
42. The Claimant called Israel Kulecho Karakacha(CW1), who stated he was a member of the Claimant( signed check off form dated 25<sup>th</sup> October 2019 page 34 of the claimant's documents ) as its witness of fact who adopted his witness statement dated 4<sup>th</sup> March 2020 as the claimant's evidence in chief and produced the claimant's documents as exhibits C-1-13 and also adopted documents under Notice of Motion Application dated 4<sup>th</sup> May 2020. The witness was cross-examined by counsel for the Respondent Mr. Ipapu.
43. CW1 had no evidence whether the Respondent had been incorporated and had no evidence of the Claimant union being registered, the witness told the Court there was no recognition agreement between the Claimant union and the respondent.
44. On re-exam CW1 stated that the General Secretary of the Claimant wrote a letter on the deductions (C-exhibit 2b) and produced the Gazette notice on the deductions but the management of the Respondent did not make the deductions.
45. CW2 Ibrahim Aruna Aramadhani also testified for the claimant. CW2 stated he was sacked for joining the Claimant union. He stated that the union gave them forms as employees and that they recruited in the departments. That it was the employees who recruited members from the Respondent and not the union.
46. CW3 Festus Ouma Wandera told the Court he had a criminal case at the High Court for forgery of signatures of workers and of him having recruited members and not the union. The Court was informed that the case was ongoing. CW3 stated that the Claimant union is recognised and had a Constitution (Page 12 of the original claimant's bundle of documents filed on 13<sup>th</sup> February 2020).
47. CW4 was Jacob Wanjala Were who adopted his undated witness statement filed in Court on the 26<sup>th</sup> August 2020 and was not cross-examined.
48. In written submissions, the Claimant submits that the essence of the employee signing the deductions forms is to give the final authority to his employer as per the requirements of the law on union deductions. That once the employee has signed the check off forms the employer is obliged to deduct and remit dues to the union as held in the case of Kenya Tertiary and Schools Workers Union v Rocky Driving school(2018) where Justice Wasilwa held that where there existed employees who had signed check off forms and desired to join the union that right was guaranteed under Article 41 of *the Constitution*. The claimant further submitted that the employer had nothing to lose in making the deductions as held in Kenya Chemical and Allied Union v TATA Chemicals Magadi Limited (2018) e



KLR while the employees were on other hand denied the right to membership and association rights protected under the Bill of Rights in *the Constitution*.

### **The Respondent's case and submissions**

49. The Respondent entered appearance and filed statement of defence dated 25<sup>th</sup> February 2020 through the lawfirm of Ipapu P. Jackah & Company Advocates. The Respondent further filed replying affidavit of Caleb Anyula(DW) sworn on the 25<sup>th</sup> February 2020.
50. In summary the defence as per the replying affidavit which was adopted by DW as evidence of the Respondent was to the effect that:-
51. That it was not true the Claimant recruited the Respondent's employees into the union membership and if the same was done it was through employees whose contracts had expired and managed to access the Respondent's employment register details.
52. That the employees cited in the affidavit and who form the crux of this claim were contractual workers whose contracts had expired and annexed as D- exhibits CA-1a-1j.
53. That the Claimant in what amounts to perjury forged signatures and annexed copies of a document of employees disassociating themselves from the check off list by claimant (CA2).
54. That some of the employees purporting to join the union were in senior management echelons such as Stephen Mula Sichire (CA3).
55. During the hearing DW1 confirmed he was the Human Resources Officer of the Respondent and had received communication on the deductions. He was of the opinion that there had to be a recognition agreement for the deductions to be done. DW told the Court 82 employees consented, they signed checkoff, and 114 declined. He had no evidence in Court . CA2 had name of Festus Wandera who did not sign. Festus was CW3 and told the Court he had been asked to sign the document produced as CA2 and refused.
56. DW admitted to having received the deduction forms. DW stated the employees who signed the check offs were all contractual and their contracts had expired. DW had not filed the letter of appointment of Mula who he stated was a senior employee.
57. DW acknowledged that in their letter to the trade union they did not question its registration.
58. In written submissions, the Respondent submits the failure by the Claimant to adduce evidence of its registration denied it capacity to institute the proceedings and the respondent could not engage with an anonymous entity. That the claimant could not be successful in its cause against the Respondent without a recognition agreement between the parties.

### **Decision on issue 1**

59. The Respondent through its witness Caleb Anyula admitted to having received the notice of deduction authority and the check off forms signed by its workers and produced by the claimant as C-exhibits 2a,2b and 2c. The respondent on receipt of these documents vide a undated letter to the Union (CA2)demanded an explanation as to how the union had obtained details of its workers to enlist as members of the trade union and annexed a list of employees allegedly who had not signed the forms. CW3 was NO. 32 under the letter (CA2) and stated he was asked to sign the form and refused. There is a forgery case at the Court at Busia so the Court will say no more on the letter.



60. The Respondent submitted that the claimant lacks locus to bring the suit for failure to provide evidence of registration. I looked into the statement of defence and replying affidavit of the Respondent and found that the issue of registration of the claimant was not an issue in dispute. Parties are bound by their pleadings. Indeed in the letter produced as CA2 by DW the issue of registration of the union was not raised. The Court finds this issue to be an ,afterthought. The claimant produced its amended Constitutions registered with the Registrar of Unions and duly stamped and dated 15<sup>th</sup> February 2011 and no objection was raised. The Court is satisfied as to the registration status of the claimant.
61. On the issue of whether or not there was a cause of action against the Respondent. The Court found evidence that the claimant did recruit workers of the respondent and indeed DW admitted so while stating only 82 signed. There was admission of receipt of notice of authority to make deductions and the check off forms for the deductions by the Respondent.
62. The Court recognizes the right of the employees to join a union and to enjoy the benefits of unionization offered by the union which include representation at shop floor and collective bargaining. The right is anchored in international law, *the Constitution* and statutes. See Article 8 International Covenant on Economic, Social and Cultural Rights:-

“1. The States Parties to the present Covenant undertake to ensure:

- (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;” ;

The International Labour Organization Convention 87 (1948), Right to Organize and Collective Bargaining: Convention 98 (1949); Article 41 of *the Constitution* to wit:

- ”1) Every person has the right to fair labour practices.
- (2) Every worker has the right—
- (a) to fair remuneration;
- (b) to reasonable working conditions;
- (c) to form, join or participate in the activities and programmes of a trade union; and
- (d) to go on strike.
- (3) Every employer has the right—
- (a) to form and join an employers organisation; and
- (b) to participate in the activities and programmes of an employers organisation.
- (4) Every trade union and every employers’ organisation has the right—
- (a) to determine its own administration, programmes and activities;
- (b) to organise; and
- (c) to form and join a federation.



- (5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining."

The *Labour Relations Act* section 4 to wit:-

' 4. Employee's right to freedom of association

(1) Every employee has the right to—

- (a) Participate in forming a trade union or federation of trade unions;
- (b) join a trade union; or and

5. Protection of employees

(1) No person shall discriminate against an employee or any person seeking employment for exercising any right conferred in this Act."

The Court has obligation to enforce the foregoing rights in its application of the law.

63. The foundation of the relationship between workers and unions is membership fees as envisaged under section 48 of the *Labour Relations Act* to wit:-

' 48.1) 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."

It is this membership that gives the union locus to represent members.

64. The procedure of membership is then prescribed under the section as follows:-

" 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.

(4) The Minister may vary an order issued under this section on application by the trade union.

(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.

(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."



65. The Claimant produced the notice to employer authorising deductions in which it cited authority of the Minister Gazette Notice No. 4980 which was not annexed and gave details on the deductions. The deduction was to be 2% of basic salary or any amount earned as trade union dues. In clause 2 of the letter Kshs. 150 was to be sent to the union bank account and Kshs 20 to COTU. I did find the letter ambiguous as 2% basic of the workers need not be total Kshs. 170 as the workers were not said to be earning the same. However the exact amount to be deducted and transmitted was clear under clause 2 of the notice. The workers had signed FORM S being the check off form and they had contracts had time of signing. I do find the claimant had satisfied the provisions section 48 of LRA Act.
66. Section 50 (8) LRA Act gives conditions for the union dues deductions as follows:-
- ‘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.’”
67. I do find that the Respondent on receipt of the notice of authority to deduct with the FORM S (check off deduction form ) had no choice but to comply by deduction and remittance. The Court upholds the decision by Kenya Tertiary and Schools Workers Union v Rocky Driving school(2018) where Justice Wasilwa held that where there exists employees who had signed check off forms and desired to join the union that right was guaranteed under Article 41 of *the Constitution*. The purported further signing by the workers on the submitted FORM S was unlawful and outside the legal framework of the LRA Act.
68. I hold that the Claimant had locus to institute proceedings and had a valid cause of action against the respondent who failed to comply and make deductions and remittance of union dues for the employees who had signed the check off FORM S as submitted by the union while their contracts subsisted.

**Whether the claimant is entitled to reliefs sought:-**

69. The claimant sought the following reliefs which the Court proceeds to consider.
- a. That the respondent be ordered to immediately commence deduction of check-off dues from the salaries of the employees who have voluntarily signed the union forms acknowledging membership into the claimant union.**
70. The Court finds that union deductions can only be done for employees who have signed FORM S and hold contracts with the employer. The Court found that the claimant had met the legal threshold of the union deductions. There was also evidence that some employees had since exited employment. The Court Orders that the Respondent to avail the Claimant a list of all employees who signed the check off FORM S and had exited and to start deduction of check-off dues from the salaries of the employees who have voluntarily signed the union forms acknowledging membership into the claimant union effective salary being the December salary as per the details in the check off forms.



**b. That the respondent be ordered to remit the union dues so deducted under 2 above, into the claimant's union accounts as provided for in the minister's certificate as attached to the forms signed.**

71. The issue is addressed in above order.

**c. That the respondent, his agents or managers, and/or any other. Person(s) serving the interests of the respondent be restrained /stopped/restricted from threatening, victimizing, terminating, and/or dismissing any of its employees, shop stewards, or officials on account of joining union membership and/or and or participating in activities.**

72. The Court found that the Respondent made attempts to restrict the rights of its workers to join the union as seen in CA2. That is not acceptable as it violates the constitutional rights of the workers to union and participate in union activities as guaranteed under Article 41 of *the Constitution*. The employee while enjoying union membership rights is still obliged to adhere to the terms of employment. The Court notes that the employer holds management prerogatives on disciplinary of its employees. The Union has a duty to ensure its members understand the management prerogatives of the employer. The Respondent is restrained from threatening, victimizing, terminating, and/or dismissing any of its employees, shop stewards, or officials on account of joining union membership and/or and or participating in activities.

**d. That the respondent, his agents(s) or manager(s), and /or any other person(s) serving the interests of the respondent be restrained /stopped from threatening, harassing, victimizing, termination and/or dismissing any of its employees, shop stewards or officials on account of this suit or proceedings.**

73. This prayer is related to prayer c above. The Court grants the prayer.

**e. That the Court be pleased to issue an order the recruitment is a continuous process and the respondent be restrained from interfering with the union future recruitment process and be ordered to accord branch officials and shop stewards access into the premises for recruitment and representative purposes.**

74. The access to the premises of the employer is regulated by the law under section 54 of the LRA Act which provides:-

'56. Trade union access to employer's premises

(1) Without limiting the matters that may be dealt with in a recognition agreement, a recognition agreement shall provide for an employer to grant a trade union reasonable access to the employers premises for officials or authorised representatives of the trade union to pursue the lawful activities of the trade union, including but not limited to—

- (a) recruiting members for the trade union;
- (b) holding meetings with members of the trade union and other employees outside of working hours;
- (c) representing members of the trade unions in dealings with the employer; and
- (d) conducting ballots in accordance with *the constitution* of the trade union.

(2) An employer may—



- (a) impose reasonable conditions as to the time and place of any rights granted in this section to avoid undue disruption of operations or in the interest of safety; and
  - (b) require officials or trade union representatives requesting access to provide proof of their identity and credentials.
- 3) Any dispute concerning the granting of access, or the conditions upon which access is to be granted, may be referred to the Industrial Court under a certificate of urgency. “

I do find the prayer to be premature as there was no evidence of the union having sought and been denied access to the Respondent’s premises as envisaged under this section. The prayer is held to be premature.

**f. That the Respondent be ordered to pay from its own resources a sum of money equivalent to union dues that the claimant would have earned as from November 2019 to date as a way of compensation for the loss of income as the claimant has indeed suffered.**

75. This prayer was not proved as all the witnesses had their contracts terminated early in 2020. The Court further finds union dues are payable by employees and not the employer and it would be unfair to compel the employer to pay. This is demonstrated by the law allowing direct payment of union dues to wit:- ‘ 52 of LRA. “Direct payment of trade union dues Nothing in this Part prevents a member of a trade union from paying any dues, levies, subscriptions or other payments authorised by *the constitution* of the trade union directly to the trade union.” The Court declines the prayer.

**g. That the respondent be ordered to meet and sign a recognition agreement with the claimant within 30 days. The claimant alleged that it had recruited 244 out of 395 workers of the respondent (C-exhibits 2a,2b and 2c).**

76. CW3 Festus Ouma Wandera told the Court he had a criminal case at the High Court for forgery of signatures of workers and of him having recruited members and not the union. The Court was informed that the case was ongoing. Section 54 of the *Labour Relations Act* provides for recognition agreement as follows:

“54. Recognition of trade union by employer

- (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.”

It is settled law that simple majority under section 54 of the *Labour Relations Act* means 50%+1.

77. The Court finds that as there is an ongoing criminal case with allegations of forgery of signatures of the workers with relations to the said Claimant’s exhibits 2a,2b and 2c the same the evidence of the recruitment, then the Court cannot delve into the merits of the issue.

78. The Court further notes that any dispute on recognition agreement must first be referred to the Cabinet Secretary in charge of Labour for conciliation process. A trade dispute is defined under LRA Act ‘trade dispute” means a dispute or difference, or an apprehended dispute or difference, between employers and employees, between employers and trade unions, or between an employers’ organisation and employees or trade unions, concerning any employment matter, and includes disputes regarding the dismissal, suspension or redundancy of employees, allocation of work or the recognition of a trade union; Section 62 of the Act provides for reporting of trade disputes such as the instant one as follows:-



“62. Reporting of trade disputes to the Minister

- (1) A trade dispute may be reported to the Minister in the prescribed form and manner—
  - (a) by or on behalf of a trade union, employer or employers’ organization that is a party to the dispute;”

The Claimant ought to have exhausted the legal process under the LRA Act on the issue of recognition before invoking the jurisdiction of the Court .

**h. Any other orders as the Court may wish in the interest of justice.-**

79. none

**i. The costs of this suit be provided for by the Respondent. –**

80. The Claimant union is obliged to report a trade dispute when it occurs to the Ministry of labour for conciliation process. There was no evidence before Court that the Claimant referred the matter to conciliation before coming to Court . That denies it costs which the Court proceeds to disallow.

**Conclusion**

81. The Court found that indeed the claimant had a case against the Respondent with regard to non-deduction and remittance of union dues and interference with the process of membership. The Court disallowed the prayer for recognition agreement for reasons given above. The Court enters judgment for the claimant against the respondent as follows:-

- a. That the Respondent is Ordered to avail the Claimant a list of all employees who have since exited their employment and had signed the FORM S and to commence deduction of check-off dues from the salaries of the employees who have voluntarily signed the union forms acknowledging membership into the claimant union effective 31<sup>st</sup> December 2023.
- b. That the Respondent, his agents(s) or manager(s), and /or any other person(s) serving the interests of the respondent is hereby restrained /stopped from threatening, harassing, victimizing, termination and/or dismissing any of its employees, shop stewards or officials of the Claimant on account of this suit or proceedings.

82. No order as to costs.

83. It is so Ordered.

**DATED, SIGNED & DELIVERED IN OPEN COURT AT BUNGOMA THIS 30<sup>TH</sup> NOVEMBER 2023.**

**JEMIMAH KELLI,  
JUDGE.**

In The Presence Of:

For Claimant : Akhonya

For Respondent:- Ipapu

**Application by Ipapu for the Respondent**

I apply for stay of 30 days and typed and certified proceedings.



**Court Order**

My order is effective in 30 days. I decline to Order stay of my judgment. The Respondent to be availed typed and certified copies of proceedings on application

**JEMIMAH KELLI,**

**JUDGE.**

