



**Kenya Union of Commercial Food and Allied Workers v Dadu Hardware
Limited (Employment and Labour Relations Cause E006 of 2023)
[2023] KEELRC 3108 (KLR) (24 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3108 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
EMPLOYMENT AND LABOUR RELATIONS CAUSE E006 OF 2023
MA ONYANGO, J
NOVEMBER 24, 2023**

BETWEEN

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

AND

DADU HARDWARE LIMITED RESPONDENT

RULING

1. There are two Applications before me for determination. The first application is dated 21st February 2023 and was filed contemporaneously with the Claimant's Statement of Claim. The second application is dated 23rd March 2023 and was filed by the Respondent.
2. In the application dated 21st February 2023, the Claimant seeks for orders that:
 - i. Spent
 - ii. That the claim filed herein be certified urgent and be heard on priority basis
 - iii. That the Honourable Court do issue orders restraining the Respondent from forcing employees into signing contracts of employment with an outsourcing firm known as Rabiud Services (Kenya) Limited or any other outsourced labour offering firm;
 - iv. That the Honourable Court do issue interim orders restraining the Respondent from victimizing, intimidating, coercing, harassing, disciplining or terminating the services of the claimant/applicant's members whose names appear on the check off forms on account of their union membership, pending the hearing and determination of the main suit
 - v. That the honourable court do order the Respondent to commence deduction and remittance of union dues to the Claimant's members whose names appear on the check-off forms;



- vi. That the Respondent do order the Respondent to recognize the Claimant Union for negotiating Collective Bargaining Agreement.
3. The application is supported by the grounds on its face, to wit:
 - i. That on various dates between April 2021 and October 2022, the Claimant recruited 15 out of a total possible 21 employees of the Respondent which translates to about 72% far above the 51% simple majority as required by the law under sections 54(1) of the [Labour Relations Act](#);
 - ii. That the Respondent is a company under the laws of Kenya dealing in hardware business in Eldoret town;
 - iii. That the Claimant/Applicant's constitution and rules allow it to recruit, enrol and represent the Respondent's unionisable employees;
 - iv. That the claimant/Applicant recruited about 72% of the unionisable employees as its members being more than the number required for purposes of Recognition Agreement but has been unfairly, unjustifiably and unlawfully denied recognition and union dues;
 - v. That the Claimant has pursued the Recognition agreement within the provisions of the [Labour Relations Act](#) but the Respondent did not find it necessary to recognize the union;
 - vi. That the Respondent adamant behaviour is aimed at denying the unionizable employees the right to trade union representation;
 - vii. That the Respondent's action of refusing to recognize the union and forcing the employees to join an outsourced firm without proper exit mechanisms amounts to unfair labour practice which are unlawful and unconstitutional;
 - viii. That the Respondent's unjustifiable actions violates relevant ILO conventions, sections 48 and 54 of the [Labour Relations Act](#) and Article 41 of the [Constitution](#).
 4. That application is opposed by the Respondent who filed a Replying Affidavit sworn on 23rd March 2023 by Patel Bhavinkumar Manubhai, the Respondent's Director. In his affidavit, Mr Manubhai avers that the Claimant is a stranger as there is no recognition agreement between the Claimant and the Respondent in place; that the Claimant has not attained a simple majority of the unionisable employees as the check off list presented by the Claimant contains names of people some of whom are no longer in employment; that only five (5) of the members listed in the check off forms are the Respondent's employees; that some of the employees in the annexed list have renounced their membership and have sworn affidavits to that effect.
 5. It is further the Respondent's case that there is no authority to deduct any union subscriptions from any of its employees.
 6. Mr Manubhai further deposes that the Respondent has never discriminated against any of its employees and that the assertions by the Claimant are without basis.
 7. Mr. Manubhai asserts that the Respondent is not bound to attend any dispute resolution or pay any statutory deductions whenever the same was due since it has never signed any recognition agreement to foster such an obligation or to warrant this suit.
 8. According to Mr. Manubhai the Respondent did not get into any agreement with the Claimant for union representation, never paid any subscription dues to the Claimant union and therefore the union and the people it represents are not members of the Claimant union or employees of the Respondent.



9. The court was urged to dismiss the application.
10. In the second application filed by the Respondent it seeks the following orders:
 - i. Spent
 - ii. That there be a stay of implementation of the orders issued on 13th March 2023 pending the hearing and determination of this application inter parties;
 - iii. That this court be pleased to review, vary, suspend vacate and or set aside the orders issued on 13th March 2023;
 - iv. That the court do issue directions on the expeditious disposal of this Application.
11. The grounds upon which the application is founded are that for the application are that-
 - i. That this court issues ex parte orders restraining the Applicant from among others, taking disciplinary measures against its employees;
 - ii. That the said orders have since been abused as some of the purported members of the union have resorted to insubordinate acts and acts contrary to the companies' policies;
 - iii. That there is no recognition agreement between the parties hereto and therefore the Claimant is not entitled to the orders issued;
 - iv. That the said orders are extremely prejudicial to the applicant herein and it is important that the issues raised herein are addressed;
 - v. That it is fair, just and expedient that this application be allowed;
 - vi. That this application is made in good faith and has been lodged expeditiously.
12. The application is opposed. The Claimant filed a Replying affidavit sworn on 20th June 2023 by the Claimant's General Secretary Boniface Kavuvi. It is deposed that the orders issued by this court on 13th March 2023 do not aggrieve or injure the Respondent in any way since it just restrains the Respondent from victimizing or terminating the services of the Claimant's members on account of their membership to the union.
13. Mr. Kavuvi deposes that it has attained a simple majority required by the law since recruitment is a continuous process.
14. It is further Mr. Kavuvi's averment that section 48 of the *Labour Relations Act* provides the authority to the employer to deduct union subscription from the employees and is in such mandatory terms, hence it is not up to the employer to elect whether to comply.
15. Mr. Kavuvi deposes further that the Respondent has continued harassing and victimizing the Claimant's members because of their affiliation to the Claimant union in direct violation of the orders of this court and that the Respondent should be cited for contempt.
16. It is Mr. Kavuvi's position that the Respondent forced its members to sign an affidavit denouncing and distancing themselves from being members of the Claimant union.
17. It is further his position that the Respondent is obliged under Article 41(1) and (2) (a) and (b) of the *Constitution* to observe, respect and uphold the rights of employees to fair remuneration.
18. According to Mr. Kavuvi, the orders issued on 13th March 2023 are not in any way prejudicial since the orders do not prevent the Respondent from carrying out its administrative duties.



19. Both applications were canvassed through oral submissions made by representatives of the parties in court on 11th October 2023. The parties by and large reiterated the averments in the affidavits they filed in court.

Determination

20. I will deal with the applications separately.
21. From the Claimant's application, the two main issues that fall for the court's determination are whether the Claimant has satisfied the requirements of section 54(1) of the *Labour Relations Act*, 2007, by recruiting a simple majority of the Respondent's Unionisable employees to qualify for recognition and whether the Claimant has met the requirements for deduction and remittance of Union dues.
22. When the application was filed under certificate of urgency prayers 3 and 4 of the Application were granted pending inter partes hearing of the application. The orders were subsequently extended pending hearing and determination of the Application.
23. In the Replying affidavit of Mr. Manubhai there is no denial of the fact that the Respondent intended to force employees into signing contracts with an outsourcing firm known as Rabuid Services (Kenya) Limited. A copy of the contract form with terms that are inferior to those in the *Employment Act* and the wages regulations under the Labour Institutions Act has been attached as annexure 6 at page 23 of the Claimant's bundle of documents.
24. In the Replying affidavit Mr. Manubhai he states that there is no authority to deduct union dues but admits that at least 5 of the employees whose names are in the check off list are in its employment.
25. Section 48 of the *Labour Relations Act* provides for deduction and remittance of union dues. The Act is clear on the role of an employer once it is served with the check off form. The section provides:

Deduction of trade union dues.

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.
- (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.
26. I have perused the check off forms sent to the Respondent. The reverse of the check off forms refer to [Kenya Gazette Notice No. 11153](#) of 8th August 2013 by the Cabinet Secretary for Labour, Social Security and Service under the Labour Relations Act as the authority for the deduction of union dues. The averment of the Respondent that there is no authority to deduct union dues is thus unfounded.
27. The other prayers sought by the Claimant in the application dated 21st February 2023 are, apart from those already referred to herein above, matters that can only be determined at the hearing after taking evidence from the parties. They are also part of the substantive prayers in the Claim and can therefore not be granted at this stage.
28. The second application by the Respondent seeks a review of the orders issued by this court on 13/3/2023. The court issued the following orders;
- i. That the Application is certified urgent
 - ii. That an order be and is hereby issued restraining the Respondent from forcing employees into signing contracts of employment with outsourcing firm known as Rabiud Services (Kenya) Limited or any other outsourced labour offering firm pending inter parties hearing of the application
 - iii. That interim orders be and are hereby restraining the Respondent from victimizing, intimidating, coercing, harassing, disciplining or terminating the services of the Claimant/ Applicant's members whose names appear on the check off forms on account of exercising their constitutional right of joining union membership
 - iv. That the matter is fixed for hearing on 23/3/2023 and the Applicant to serve Respondent forthwith
29. The Respondent has not specifically denied the allegations of intimidation by the Claimant. Indeed the supporting affidavit of Mr. Manubhai confirm the allegations by the Claimant of harassment and intimidation of employees who have signed check off forms.



30. The application is further based on a misapprehension of section 48 and 54 of the *Labour Relations Act* which provide for deduction of union dues and recognition of a trade union respectively. A union member is entitled to representation upon enrolment as a member of the union. The union does not require a recognition agreement to represent its members. On the other hand, once a union recruits a simple majority of members it becomes entitled to recognition for purposes of negotiation of Collective Bargaining Agreement.
31. The averments by the Respondent that the orders of the court issued on 13th March 2023 restricted the Respondent from taking disciplinary measures against its employees and that the orders have been abused by some members of the union who have resorted to insubordination are not supported by any evidence.
32. Consequently, I find the application dated 23rd March 2023 to be devoid of merit.
33. In the end I make the following orders:
- i. The Respondent be and is hereby restrained from forcing its employees into signing contracts of employment with an outsourcing firm known as Rabiud Services (Kenya) Limited or any other outsourced labour offering firm pending hearing and determination of the claim herein;
 - ii. The Respondent be and is hereby restrained from victimizing, intimidating, coercing, harassing, disciplining or terminating the services of the claimant/applicant's members whose names appear on the check off forms on account of their union membership, pending the hearing and determination of the main suit;
 - iii. The Respondent is directed to immediately commence deduction and remittance of union dues to the Claimant's members whose names appear on the check-off forms;
 - iv. The Respondent's application dated 23rd March 2023 is hereby dismissed. Costs shall be in the cause.

DATED DELIVERED AND SIGNED AT ELDORET THIS 24TH DAY OF NOVEMBER 2023.

M. ONYANGO

JUDGE

