



**Kenya Union of Commercial and Food Allied Workers v Bhumi Distributors Limited
(Cause E004 of 2023) [2023] KEELRC 3343 (KLR) (21 December 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3343 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E004 OF 2023
MA ONYANGO, J
DECEMBER 21, 2023**

BETWEEN
**KENYA UNION OF COMMERCIAL AND FOOD ALLIED
WORKERS CLAIMANT**
AND
BHUMI DISTRIBUTORS LIMITED RESPONDENT

JUDGMENT

1. The Claimant is a trade union registered under the *Labour Relations Act* and is mandated in its constitution under Rule No. 5 to represent employees in the commercial and food sector.
2. The Respondent is a registered limited liability company registered under the laws of Kenya carrying on business of wholesale and retail in Eldoret and its environs.
3. By virtue of its constitution the employees of the Respondent fall within the purview of the Claimant’s membership and it is the right union to represent the employees of the Respondent in labour matters.
4. The Claim herein was filed by the Claimant vide a Statement of Claim dated 15th February 2023 and filed in court on 21st February 2023 seeking the following orders:
 - i. That the Honorable Court award in favour of the Claimant Union and order the Respondent to recognize the Claimant union.
 - ii. That the Respondent deducts and remit union dues.
 - iii. That the union due arrears from October 2022, be remitted by the Respondent from his own account.
 - iv. That parties do engage in a collective bargaining within 30 days upon signing of the Recognition Agreement.



- v. Costs of the suit is awarded to the Claimant.
- vi. Any other remedy that the Honorable court may deem fit.
5. The Claimant avers that on various dates between July 2020 and November 2022, the Claimant recruited 23 out of a total possible 27 employees of the Respondent which translates to about 86% far above the 51% simple majority as required by the law under Section 54(1) of the [Labour Relations Act](#).
6. The Claimant further avers vide letters dated 14th October 2022 and 7th December 2022, the Claimant forwarded to the Respondent check off forms for the Respondent to commence deduction and remittance of union dues.
7. It is the Claimant's contention that the Respondent has since refused, neglected and ignored to deduct and remit the union dues despite being served with the check off forms as required under Section 48 of the [Labour Relations Act](#).
8. The Claimant avers that the Respondent has resorted to unfair labour practices and has made several attempts to transfer his employees to an outsourced firm through coercion, threats intimidation and victimization without following the proper channels laid down by the law.
9. It is the Claimant's case that the Respondent's failure to recognize the Claimant is unlawful and violates Article 41 of [the Constitution](#) and No. 87 and 98 of the ILO Conventions.
10. The Respondent filed a Memorandum of Response dated 14th April 2023 denying the averments in the claim.
11. According to the Respondent, it has seventy-seven (77) employees out of whom forty-seven (47) are in Mombasa, eighteen (18) in Nairobi and Thirty-two (32) in Eldoret and that as such, the allegations that the Claimant has recruited 23 out of a possible 27 unionisable employees of the Respondents is not true.
12. It is the Respondents position that the Claimant has failed to reach the threshold for recognition as envisaged under Section 54(1) [Labour Relations Act](#).
13. On 20th June 2023, the court directed that the claim to be disposed of by way of written submissions. The Claimant's submissions were filed on 8th September 2023 while the Respondent's submissions were filed on 14th September 2023.

Determination

14. Upon considering the pleading on record as well as the submissions filed by the rival parties, I find that the issue that falls for my determination is whether the reliefs sought by the Claimant can issue.
15. Section 54 of the [Labour Relations Act](#) provides for recognition as follows-
 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.
 2. A group of employers, or an employers' organisation, including an organisation of employers in the public sector, shall recognise a trade union for the purposes of collective bargaining if the trade union represents a simple majority of unionisable employees employed by the group of employers or the employers who are members of the employers' organisation within a sector.



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.
 4. The Minister may, after consultation with the Board, publish a model recognition agreement.
 5. An employer, group of employers or employers’ association may apply to the Board to terminate or revoke a recognition agreement.
 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. Election of trade union representatives.
16. The Claimant has alleged that on various dates between July 2020 and November 2022, it recruited 23 out of a total possible 27 employees of the Respondent which translates to about 86% far above the 51% simple majority required by the law under section 54(1) of the [Labour Relations Act](#).
17. Section 10 and 74 of the [Employment Act](#) confers responsibility on the employer to keep employment records. By dint of section 10 and 74 of the [Employment Act](#), it was incumbent upon the Respondent to prove that indeed the Claimant had not recruited into its membership a 51% simple majority as required by section 54 of the [Labour Relations Act](#) by providing a list of its employees.
18. 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:
48. 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.



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.
19. In the instant case, the Respondent was served with the check off forms by the Claimant and was required to deduct union dues from its employees upon receiving the said check off forms.
 20. It is not the business of the employer to make further inquiries over who has or has not signed the check off forms as this would amount to intimidation. Section 48 deals with the situation where an employee does not wish to continue with deductions and an employer can only make inquiries in respect of a particular employee who makes a complaint over the deduction of union dues.
 21. It is instructive that the Respondent did not deny that the Claimant has recruited the employees in the check off forms. It should have commenced deduction of union dues upon receiving the check off forms.
 22. The Respondent has not proved that it has 77 unionisable employees or that its headquarters are in Mombasa. It has further not proved that it has a branch in Nairobi as alleged in its pleadings.
 23. From the evidence on record, I find and hold that the Claimant has proved its case on a balance of probabilities.
 24. In the end, I find that the Claimant has proved its case against the Respondent and I enter judgement in favour of the Claimant in the following terms:
 - a. The Respondent is hereby ordered to sign a recognition agreement with the Claimant within 30 days from today.
 - b. The Respondent is hereby ordered to deduct and remit union dues from employees who have acknowledged their membership through signing the check off forms.
 - c. Parties are directed to commence collective bargaining in the manner provided in the law upon signing recognition agreement.
 - d. Respondent to pay the Claimant costs of the Claim which I assess at Kshs.100,000 to include reasonable costs and disbursements.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 21ST DAY OF DECEMBER 2023.

MAUREEN ONYANGO

JUDGE

