



**Kenya Union of Road Contractors and Civil Engineering Works v  
China Railway No 10 Engineering Group Company Limited (Cause  
E047 of 2023) [2023] KEELRC 3430 (KLR) (19 December 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3430 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE E047 OF 2023  
CN BAARI, J  
DECEMBER 19, 2023**

**BETWEEN**

**KENYA UNION OF ROAD CONTRACTORS AND CIVIL ENGINEERING  
WORKS ..... CLAIMANT**

**AND**

**CHINA RAILWAY NO 10 ENGINEERING GROUP COMPANY  
LIMITED ..... RESPONDENT**

**RULING**

1. Before Court is the Applicant/Claimant's motion dated 29<sup>th</sup> June, 2023, wherein, the Claimant seeks an order compelling the Respondent to commence deduction of union dues, and the immediate remittance to the Claimant union pending the hearing and determination of the suit. The Claimant also seeks to be awarded the costs of the application.
2. The motion is supported by grounds on the face thereof and the affidavit of Charles A. J. Osicho. The crux of the motion is that the Claimant recruited members from the employ of the Respondents, and the Respondent has deliberately refused to deduct and remit union dues to the Claimant.
3. The Claimant further avers that it reported the dispute to the cabinet Secretary for Labour, who appointed a conciliator to conciliate the dispute. It states that the Conciliator failed to issue a certificate of no agreement in good time to facilitate further negotiation.
4. It is the Claimant's assertion that the Respondent is well aware that the Claimant has recruited unionisable employees and is thus entitled to the union dues.
5. The Claimant/Applicant prays that it be granted the orders sought.



6. The Respondent opposed the motion vide a replying affidavit sworn by one Victoriiah Mukiri on 5<sup>th</sup> October, 2023.
7. It is the Respondent's position that the Claimant/applicant's members have not approved the filing of this suit and have not signed any form allowing the Claimant to lodge this claim.
8. The Respondent further avers that indeed, it has on-going projects and construction works within Kisumu County and that persons engaged, work only for the length of the particular project. It is its position that it makes payments on daily or weekly basis to workers who report to work depending on the agreement it has with each particular worker.
9. It is the Respondent's assertion that workers report to work depending on availability of work and that rarely would they have a worker working for a continuous 30 days.
10. The Respondent states that when it received the Claimant's forms on deduction and remission of union dues, it informed the workers, but the workers protested deductions from their pay and insisted that they be paid their full agreed amount without any deductions.
11. The Respondent avers that none of their workers has confirmed being members of the Claimant's union, so as to enable them deduct union dues. The Respondent further avers that most of the names on the Claimant's list are persons it has never employed.
12. It is the Respondent's assertion that the non-remittance is to avoid being sued on account of unauthorized deduction of the workers wages.
13. Parties canvassed the motion by way of written submissions, and which have been duly considered.

### **Determination**

14. I have considered the motion, the grounds in support, the replying affidavit in opposition and the written submissions by both parties. The issue for determination is whether the Claimant has satisfied the conditions for deduction and remission of union dues from the Respondent's employees.
15. The Respondent is opposed to the deduction of union dues on the basis that some of the members listed on the form submitted by the Claimant are not her employees. It also disputes having receiving the check-off form envisaged under Section 48 of the *Labour Relations Act*, 2007.
16. Deduction of union dues is provided for under Section 48 (2) and (3) of the *Labour Relations Act*, which states thus: -
  - “(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.”

17. The Claimant's position is that it has recruited nine (9) employees from the service of the Respondent. A list of the employees so recruited has been produced in evidence in this matter and although the Respondent disputes some of the persons listed being its employees, it has not told the court who of the persons listed and/or how many of them are not in their employ.
18. Further, although the Respondent disputed receipt of the statutory Form S authorizing deductions and remission of union dues, the record tells a different story. Indeed, Form S, also known as the check-off form was submitted to the Respondent and whose receipt it did acknowledge in its submissions.
19. In *Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals & Allied Workers (Kudheiba) v British Army Training Unit Kenya* [2015] eKLR, Mbaru J held thus:

“Under section 48 of the *Labour Relations Act*, an employer is bound to remit all Union dues deducted to the Union account irrespective of recognition as under this part, where there are more than 5 employees in the membership of a Union, the employer should make deductions and remit to the Union. The deduction and remittance of Union dues from employees who have acknowledged Union membership should be based on the Minister for Labour making an appropriate order through Kenya Gazette indicating the account to which such Union dues should be remitted. ....

The duty on the Union is to submit to the employer the names and identity card numbers of the employees through the check-off forms.”
20. The record further confirms that the Minister for Labour made an order for deduction of Union dues vide gazette notice Numbers 159 of 29<sup>th</sup> June, 2021
21. Article 41 of *the Constitution* read with Section 4 of the *Labour Relations Act*, 2007, protects every employee's right to join a union and to participate in the activities of the union. The Check-off forms produced in evidence is prove that the Respondent's employees joined the Claimant's union, and no evidence has been led to show that they have since resigned from the Claimant union. In *Tailors and Textiles Workers Union v Global Apparels EPZ Limited* [2019] eKLR, the Court held thus: -

“The Respondent has not demonstrated that those employees on this Firms have indeed written to them indicating that they have resigned from the union. If there is such resignation, the same has not been notified to the union and the end result is that the Applicant has established a prima facie case to warrant issuance of orders sought.”
22. In the same breath, although the Respondent contends that the employees who joined the Claimant's union demonstrated against deduction of union dues from their salaries, the law does not recognize demonstrations to mean resignation from a union. The employees must move and formally resign from the Claimant union for their protests against the deductions to have legal basis.
23. Further, the law does not require an employer to further consult employees on whether union dues should be deducted from their salaries. The law is clear on how such consent is obtained, and it is not in the employer's place to require the employees to grant further consent once the check-off form is duly executed by the employees and submitted to the employer by the union.
24. In the premise, I find the Claimant/Applicant's motion merited and grant orders as follows:



- i. That an order be and is hereby issued compelling the Respondent to deduct and remit monthly union dues from its employees to the Claimant union's account as set out in the check-off form.
- ii. The costs of the application shall be in the cause.

25. Orders accordingly.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 19TH DAY OF DECEMBER, 2023.**

**CHRISTINE N. BAARI**

**JUDGE**

**Appearance:**

**N/A for the Applicant/Claimant**

**Mr. Mwachofi Present for the Respondent**

**Laura- C/A**

