



**Bakery Confectionary Food Manufacturing and Allied Workers Union (Kenya) v Monking Bakers Limited (Cause 763 of 2019) [2022] KEELRC 1508 (KLR) (26 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1508 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 763 OF 2019  
MA ONYANGO, J  
MAY 26, 2022**

**BETWEEN**

**BAKERY CONFECTIONARY FOOD MANUFACTURING AND ALLIED WORKERS UNION (KENYA) ..... CLAIMANT**

**AND**

**MONKING BAKERS LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant is a trade union registered under the *Labour Relations Act* mandated to represent employees engaged in bakery, confectionary, food, manufacturing and related industries.
2. The Respondent is a limited liability company registered in Kenya under the Companies Act. It is engaged in the business of manufacture and sale of bakery and confectionary products. As such, pursuant to the provisions of the Claimant's constitution, its employees are eligible to be enrolled as members of the Claimant in the exercise of their constitutional rights to join and participate in the activities of a trade union as envisaged under the provisions of Article 36 as read together with Article 41(2)(c) of *the Constitution* of Kenya.
3. The Claimant avers that it recruited a total of 21 employees out of a workforce of 31 unionisable employees of the Respondent pursuant to Article 36 as read together with Article 41(2)(c) of *the Constitution* of Kenya.
4. The Claimant avers that on 29<sup>th</sup> October 2019, the Claimant notified the Respondent of this vide a letter dated the 29<sup>th</sup> October 2019 by forwarding the form S (check-off forms) requiring the Respondent to effect deduction of trade union dues in respect of the employees who had acknowledged membership with the Claimant, in accordance with the provisions of Section 48 of the *Labour Relations Act* of 2007.



5. The Claimant avers that on 30<sup>th</sup> October 2019, the Claimant forwarded to the Respondent a standard recognition agreement and convened a meeting with the Respondent to be held on the 7<sup>th</sup> November 2019 at 2:00 pm for the execution of the recognition agreement.
6. That upon receipt of the check off forms and other correspondences from the Claimant, the Respondent called all the members in its employ who had joined the Claimant Union and proceeded to reprimand them for joining union membership by ordering them to vacate from the Respondent's premises until further notice thus subjecting them to abject victimization.
7. The Claimant reported a trade dispute to the Minister for Labour in accordance with Section 62 of the *Labour Relations Act* on 8<sup>th</sup> November 2019. However, owing to the urgency of the matter, after the Respondent started victimising its members, it moved to Court immediately by virtue of the provisions of Section 74 of the *Labour Relations Act*.
8. In the memorandum of claim dated 11<sup>th</sup> November 2019 and filed on even date, the Claimant seeks the following reliefs from this Court –
  - a. A declaratory order to issue directing the Respondent to forthwith execute the Recognition Agreement in the form and model presented to it by the Claimant within 14 days of delivery of the Judgment herein;
  - b. An order to issue directing the Respondent to forthwith commence deduction and remission of union dues in respect of employees who have acknowledged union embership;
  - c. A permanent injunction against victimization, intimidation and unlawful termination of employment of employees on account of their union membership;
  - d. An order directing that the Respondent to commence negotiations to put a Collective Agreement in place within ninety (90) days of delivery of the Judgment herein;
  - e. Costs be provided for; and
  - f. Any other or further relief deemed fair and fit to grant under the circumstances.
9. Simultaneously with the memorandum of claim, the Claimant filed a notice of motion seeking the following orders –
  - i. Spent.
  - ii. That this Honourable Court do issue an order of temporary injunction restraining the Respondent from victimizing, intimidating, coercing, harassing, terminating, dismissing the Claimant/Applicant's members for exercising their right to join the applicant union and perpetrating unfair labour practices upon union members pending the inter partes hearing and determination of the application herewith.
  - iii. That this Honourable Court do issue an order of temporary injunction restraining the Respondent from victimizing, intimidating, coercing, harassing, terminating, dismissing the Claimant/Applicant's members exercising their right to join the applicant union and perpetrating unfair labour practices upon union members pending the inter-partes hearing and determination of the suit herewith.
  - iv. That pending hearing and determination of the application herewith, the suit and or until further orders of this Honourable Court, the Respondent be restrained from denying the Applicant's members ingress into their respective work stations for performance of their



duties and employment obligations, from interfering in any manner whatsoever with their contractual entitlements, salary, benefits and any of the applicant's other entitlements.

- v. That the costs of this application be provided for.
10. The application is supported by the grounds on the face thereof and the affidavits of Danchael Mwangure, the General Secretary of the Claimant, Bernard Ituku Musauand David Mwove Mwethi, members of the Claimant.
  11. It is deposed therein on behalf of the Claimant that upon receiving the check off form, Form S from the Claimant, the Respondent through Betty Wausi Musumbi, a Manager of the Respondent called all the workers who had joined the union to her office where she demanded an explanation why they had joined the union. She thereafter directed them to report to the Brinks Security which was handling the Respondent's security, for re-assignment.
  12. That once the said workers reported to the security, they were directed to write letters withdrawing from union membership and apologise for the same before they were allowed back to work. That the workers who failed to write letters withdrawing from union membership were not issued with security clearance and were therefore unable to access their work stations although their employment was not terminated.
  13. They further aver that the employees who had been provided with housing were evicted.
  14. The employees who had joined the Union were informed that if they failed to withdraw from union membership they would be replaced while those who had not and were warned of dire consequences should they join the Union.
  15. They further aver that the workers were not paid salaries for October 2019.
  16. Upon considering the application filed by the Claimant the Court made orders as follows –
    - i. That application be and is hereby certified as urgent and fixed for inter partes hearing on 25<sup>th</sup> November, 2019.
    - ii. That in the meantime the Respondent is restrained from victimizing, intimidating or coercing, harassing, terminating or dismissing the Claimant/ Applicant's members on from denying the Applicant's members access for their respective work stations as prayed in prayer (2) and (4) of the application on grounds of union membership or activities.
  17. The Respondent filed a response to both the memorandum of claim and the application denying the averments of the Claimant.
  18. The Respondent filed a Replying Affidavit sworn by Betty Wausi Musumbion 26<sup>th</sup> November, 2019 and two Replying Affidavits sworn by Raymond Nzioka on 26<sup>th</sup> November 2019 and 20<sup>th</sup> January 2020.
  19. It is deposed therein that on or about 24<sup>th</sup> October 2019, the Respondent received information from the office in Masii, that some of the workers had reported to work late and when asked to explain they became unruly. That upon receiving the information, the Respondent requested the Finance Manager, Betty Wausi MusumbI, to ask the workers involved to report to Head Office for discussions. That only four of the 21 employees reported to the office and after discussions, were released to report back to work.



20. That during the meeting, it transpired that some of the employees had signed the union membership forms under duress and did not understand what they were signing. That the Respondent requested the employees to write letters confirming what they had told the Respondent.
21. That one employee, Paul Juma Wafula denied signing the check off form and alleged his signature was forged.
22. It is the position of the deponent that it would only have been fair for the Claimant to inform the Respondent about any recruitment before embarking on the exercise.
23. Mr. Nzioka confirmed that salaries for October 2019 had not been paid to the workers. He denied that any employee had been denied entry or access to the work premises Mr. Nzioka annexed to his affidavit letters from four employees dated 29<sup>th</sup> November 2019 apologising about incitement of 24<sup>th</sup> November 2019 and alleging that they only learned that the documents they signed were union membership forms from their Manager, that is the Respondent. The four letters are identical almost word for word. The fifth letter annexed is from Paul Juma Wafula in which he states that he did not sign the check off forms and his signature in the document was without his opinion.
24. In the replying affidavit of Betty Wausi Musumbi sworn on 25<sup>th</sup> November 2019, she deposes that on or about 24<sup>th</sup> October 2019 some employees reported late for work and when called to explain why they became unruly. That she informed the Head Office who requested that the affected employees report to Head Office for a meeting which she did.
25. She deposes that she was informed by the Human Resource Manager that only four employees heeded to the summons and attended disciplinary sessions. That the other 17 employees did not report back to work at the Respondent's offices at Masii.
26. She deposes that the employees did not mention to her about joining union membership. That she learned about the employees' membership of the union when she was served with Court documents by a process server on 17<sup>th</sup> November 2019.
27. She denied victimising the employees or that she coerced, harassed, terminated and dismissed the members of the Claimant from exercising their right to join the Union.
28. In another replying affidavit of Raymond Nzioka sworn on 20<sup>th</sup> January 2020 in which he deposes that after appearing in Court on 25<sup>th</sup> November 2019, the Respondent sought a meeting with the employees at Head Office in Nairobi in order to resolve the dispute between the employees and the Manager in Masii.
29. That the employees expressed difficulty in raising fare to Nairobi and the Respondent through its Manager in Masii met the employees on 20<sup>th</sup> and 27<sup>th</sup> November 2019 and agreed to hold a meeting on 3<sup>rd</sup> December 2019.
30. That on 3<sup>rd</sup> December 2019, the deponent, the Legal Officer of the Respondent, Mr. Chege and Betty Musumbi (now deceased) met eight employees of the Respondent at Masii Police Station as the employees preferred neutral location rather than the Respondent's offices.
31. He denies that any police officer attended the meeting. He further denies that the employees were escorted to the police station as deposed in the affidavits of Danchael Mwangure, David Mwove Mwethiand Bernard Ituku Musau.



32. That during the meeting the employees they did not agree on a return to work formula until they consulted the union. That all employees refused to report back to work except Alfred Muriithi who is still working for the Respondent.

### **Claimant's Submissions**

33. The parties agreed to dispose of the suit by way of written submissions. Both parties adopted the affidavits on record as their witness statements.
34. The Claimant submits that the statutory test for recognition of a union is set out in Section 54(1) of the *Labour Relations Act* which provides –
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.
35. The Claimant submits that the check off forms it has submitted are not contested by the Respondent whose only defence is that the Claimant did not approach it before recruiting its employees and that some of the employees recruited have since left the Respondent's employment with the exception of Alfred Muriithi.
36. The Claimant submits that the recruitment was carried out in October 2019 and by a letter dated 30<sup>th</sup> October 2019, the Respondent was invited for a meeting on 7<sup>th</sup> November 2019 for the purpose of execution of the recognition agreement. That therefore, 7<sup>th</sup> November 2019 is the date for accrual of the cause of action herein. That the Respondent having been served on 13<sup>th</sup> November 2019, did not file a defence until November 2021, two years later.
37. The Claimant submits that by virtue of Section 74 of the *Employment Act*, the Respondent being the custodian of employment records, is bound to produce records of its employees as at the date of accrual of the action herein being 7<sup>th</sup> November 2019.
38. The Claimant relies for emphasis on the case of *Bakery Confectionery Food Manufacturing & Allied Workers Union (K) v Sameer Agriculture & Livestock Limited*, Cause 469(N) of 2009 (unreported) the Industrial Court held as follows; -

“It is the employer's duty to prepare and maintain employment records. We are surprised that in challenging the union's claims the Respondent did not find it necessary to produce its muster roll before the court for verification. The Respondent did not disclose the exact number of its employees. It just stated that it has had about 100 employees. That is not enough. It should have gone ahead to produce the muster roll to back its claims. In the circumstances we have to give the benefit of the doubt to the union who placed the number of Respondent's employees at about 60. In view of the fact that the union has recruited 54 employees we rule that they have enlisted a simple majority of the Respondent's workforce as members.”

39. The Claimant also relies on the case of *Kenya Union of Nurses v Friends Lugulu Mission Hospital* [2021] eKLR, where the Court held as follows; -

“Recognition for purposes of collective bargaining is a mandatory requirement under Section 54(1) of the *Labour Relations Act*. As observed earlier in the judgement, the



only precondition is the recruitment of simple majority of unionisable employees in the organization. Once this condition is met recognition is mandatory.”

40. The Claimant submits that the Respondent claims that some of the employees allegedly recruited by the Claimant denied having signed the recruitment document. In the list of documents, the Respondent has attached letters by various employees alleging that the employees denounced executing the check off forms.
41. The Claimant submits that the said letters are a product of victimization by the Respondent and ought to be disregarded by the Court. In the Affidavit of one David Mwove Mwethi dated 9<sup>th</sup> December 2019 filed on the 10<sup>th</sup> of December 2019 and annexed to the contempt application dated 9<sup>th</sup> December 2019 and filed on the 10<sup>th</sup> of December 2019, the said David Mwove Mwethi indicates at paragraph 8 and 9 of the same affidavits that employees of the Respondent who had joined the union were locked out of employment and forced to execute similar type letters in order to secure their return to work. As a result, several employees including Benjamin Ngeno Kipkorir, Felix Kimaili Kiluu, Francis Ndolo and Paul Juma executed the said letters and were subsequently allowed to resume duty.
42. The Claimant submits that the said letters which curiously consists of the same content and wording seem to suggest that the same is a product of intimidation of the workers who were coerced into writing the same in order to secure and protect their employment. The said letters are a product of coercion and intimidation of employees for exercising their right to join the union and ought to be rejected by the Court in any event.
43. On deduction of union dues, the Claimant submits that the Respondent was duty served with the requisite check off forms and was called upon to deduct and remit trade union dues in respect of the said employees who had acknowledged union membership. That to date, the Respondent has failed to deduct and remit trade union dues in respect of the employees who have joined the Claimant union in breach of the provisions of Section 48 of the *Labour Relations Act, 2007*.
44. The Claimant submits that the right to trade union membership and the participation in trade union activities including subscription and remission of trade union dues is granted Constitutional anchorage under articles 36 and 41 of *the Constitution*. Failure to deduct and remit union dues is a violation of the employees’ rights to participate in the activities and programmes of a trade union and should not be taken lightly. That in the case of *Kenya Game Hunting & Safari Workers Union v Micatio Safaris* [2013] eKLR, the Court held as follows; -
- “In this regard Article 41(1) provides that every person has the right to fair labour practices whereas sub-article 2 provides:
- “Every worker has the right to-  
To form, join or participate in the activities and programmes of a trade union.” This right is not to be taken lightly by the employer and its violation would attract serious sanctions from the court.”
45. The Claimant relies on the case of *Bakery Confectionery Food Manufacturing & Allied Workers Union(K) v Sameer Agriculture & Livestock (K) Limited*, Cause No. 469(N) of 2009 (unreported) the Kosgey J. held that; -
- “The union dues to be deducted and remitted by the applicant to the union are not the applicant’s (employers) money. The applicant will therefore not suffer any pecuniary loss. The money belongs to the employees who are the union members, and they are entitled to



donate their money to the union or apply the same to any other cause. The employer cannot therefore interfere with their exercise of this right.”

46. The Claimant submits that the burden of payment of unpaid backdated union dues should be met by the Respondent due to their failure to deduct and remit the union dues at the time when the dues ought to have been remitted. Upon receipt of the “Notice To Employer Authorizing Union Deductions”, the Respondent ought to have begun deduction of union dues, however the Respondent decided not to in breach of Section 48 of the *Labour Relations Act*, 2007. That the Respondent has caused the union dues to accrue to the extent that should the union require the accrued dues from the employees who are members of the union, such action shall be punitive to the said members and the same ought to be borne by the respondent from its own coffers.
47. That in the case of *Banking, Insurance & Finance Union (Kenya) v Maisha Bora Sacco Society Limited* [2016] eKLR, Mbaru J. held that the employer ought to pay the unpaid accrued union dues and not the employee. She stated that:
- “Where Union dues are required to be deducted and remitted to a Trade Union of federation of Trade Unions, where such dues are not collected and remitted as legally due, or the employer has deducted and failed to remit to the subject Trade Union, the employer shall pay such dues from its own accounts and remit in accordance with the Order published by the Minister. Such uncollected dues from the unionized employees cannot be received from the employee as the employer is at fault and there is evidence of being served with check-offs of more than 5 employees members of the Claimant Union. Such is the sanctity of the law and constitution with regard to giving effect to the right to associate and unionize under Article 36 and 41.”
48. The Claimant prays for judgment as prayed in the memorandum of claim.

### **Respondent’s Submissions**

49. The Respondent submits that the Claimant did not challenge the averments in the affidavits of Nzioka and Betty Musumbi to the effect that employees refused to go back to work as confirmed in the affidavits of Bernard Ituku Musau and David Mwove Mwehi, the Claimants’ witnesses.
50. The Respondent further submits that it was not served with any notice of the meeting of 7<sup>th</sup> November 2009 as there is no proof that the Claimant served the letter dated 30<sup>th</sup> October 2019 upon the Respondent.
51. That in the instant case the Claimant pleaded that it had attained a simple majority of the Respondent’s unionisable workforce. That the Claimant in its submissions alleges that the Respondent raised the issue of the employees having left the Respondent’s employment in their defence which was filed in November, 2021. That the said allegations are misleading because the Respondent raised this issue at the earliest opportunity. They refer to the replying affidavit by Raymond Nzioka sworn on the 26<sup>th</sup> day of November, 2019 and filed on the same day. That paragraph 14 of the said affidavit states that the employees have not reported to work from the date they became unruly. That paragraph 7 of the replying affidavit sworn by Betty Wausi Musumbi on the 20<sup>th</sup> day of November, 2019 and filed in court on the 26<sup>th</sup> day of November, 2019, states that the employees did not honour the summons neither did they report back to work.



52. The said averments were not challenged, contested and or contradicted by the Claimant. It is therefore true that the said employees were not in the Respondent's employment at the time that the instant claim was filed.
53. The Respondent submits that the joining of a trade union must be voluntary because it involves deduction of money from the employee's salary. That it is trite law that he who alleges must prove. The Respondent submits that the employees were coerced to sign the forms and further that by the time the matter was filed in court, that the alleged employees had already left the Respondent's employees employment other than one employee.
54. The Respondent relies on the case of *Kenya Hotels and Allied Workers Union v Attorney General & 6 others*, [2015] eKLR where the majority decision held that;
- ...For the Claimant to qualify for recognition by the 2<sup>nd</sup> Respondent, it must prove that it has achieved a simple majority of either 50% of the 2<sup>nd</sup> Respondent's member organisations or of the employees of the 2<sup>nd</sup> Respondent's members. The Court cannot hand the Claimant recognition without it proving that it has achieved a simple majority as this would contravene both Article 41 of *the Constitution* and Section 54 of the Act."
55. The Respondent submits that it is not obligated to sign the recognition agreement at this stage since the Claimant is yet to meet the required threshold.
56. On non-remittance of union dues, the Respondent relies on Section 19(1)(f) and (g) of the *Employment Act* which provides that:
- f. any amount the deduction of which is authorized by any written law for the time being in force, collective agreement, wage determination, court order or arbitration award;
  - g. any amount in which the employer has no direct or indirect beneficial interest, and which the employee has requested the employer in writing to deduct from his wages;
57. It is the Respondent's submission that for any deduction to be effected, it must be authorised by the employee. That in the instant case, it is not in dispute that the alleged employees are not in the Respondent's employment hence the orders sought have been spent and it would be in vain to grant the same.
58. That even if the Court were to give orders for such deductions, they would not be enforced in view of the fact that the employees have already left employment. That Court orders are not given in vain.
59. The Respondent submits that it cannot be compelled to deduct and remit dues for employees who are no longer in its employment.
60. That having demonstrated that the employees are no longer in Respondent's employment, the Respondent submits that the Claimant has not met the requisite threshold to warrant the signing of a standard recognition agreement with the Respondent and we humbly pray that the claim be dismissed with costs.

### **Analysis and Determination**

61. It is not contested that the Claimant recruited 21 employees of the Respondent. The Respondent has not contested that at the time of recruitment, it had in its employment a total of 21 unionisable employees and therefore the number recruited by the Claimant constituted more than a simple



majority of the Respondent's unionisable employees in terms of Section 54(1) of the [Labour Relations Act](#) which provides –

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.
62. The Respondent further concedes that an employee is free to join a trade union of his choice. It does not contest that the Claimant is the relevant union in respect of its employees.
63. The points of divergence between the Claimant and Respondent are: -
  - i. What is the relevant date for purposes of recognition;
  - ii. Whether the Claimant is entitled to the orders sought.
64. Recruitment of members of a trade union is always an ongoing exercise. As new members are recruited, others leave for various reasons. It could be because they have left employment or resigned from membership of the union. Also new members continue to be recruited from non-members in employment or new employees. The number of union members is thus not static and must be reckoned at a particular time.
65. It is for this reason that it is considered that the time the trade union seeks recognition is the correct time to consider whether it has achieved a simple majority or not.
66. In the instant case, the relevant date for purposes of considering whether or not the Claimant had achieved recruitment of a simple majority is the date on which it sought recognition.
67. The Claimant submits that the relevant date is on 7<sup>th</sup> November 2019 when it sought a meeting for purposes of execution of the recognition agreement while the Respondent denies ever receiving the letter and avers that the Claimant has not proved it received the letter.
68. The Respondent cannot feign ignorance of the fact that its employees joined membership of the Union.
69. It cannot be that it is by coincidence that 21 employees reported for work late on 24<sup>th</sup> October 2021. It further cannot be that the said employees did not receive any communication over the lateness or alleged “unruly” behaviour as none has been produced by the Respondent.
70. Further, the Respondent has not stated what constituted the “unruly” behaviour. It is further not explained why employees accused of unruly behaviour would be asked to travel for Masii to Nairobi to discuss the unruly behaviour
71. Further, the Respondent has not stated what constituted the “unruly” behaviour it is further not explained why employees accused of unruly behaviour would be asked to travel from Masii to Nairobi to discuss the unruly behaviour.
72. Again, it cannot be that after four or is it five employees reported to Nairobi, the only business handled by them was to sign letters denouncing their union membership allegedly because they were not aware of what they were signing.
73. 7<sup>th</sup> November 2019 was the date proposed by the union in its letter dated 30<sup>th</sup> October 2019 for signing of the recognition agreement. Is it a coincidence that it is the same date that some employees were renouncing union membership?



74. Again, in the said letters of the employees dated 7<sup>th</sup> November 2019, they do not deny joining the union. The letters which I have already observed are identical word for word, the authorities agree that they joined the union membership.

75. One letter by Benjamin Ngeno is reproduced below –

“07<sup>th</sup>/11/2019,

Benjam Ngeno

ID. xxxx

O Box 5

Masii

Human Resources Manager

Monking Bakers

Box 5,

Masii

Dear Madam & Sir

RE: Incident on 24<sup>th</sup>/11/2019

The above subject matter refers.

I apologise for the incident that took place on 24/11/2019.

We were lead by one of our staff David Mwove who incited us to work saying that the work procedures were not fair. He further asked us to sign a document saying that he would present to our Manager Madam Betty.

On 29<sup>th</sup>/11/2019 I came to learn through our Manager that what we signed were union registration papers. The same information was not disclosed to me at the point of signing the document. I did not know the nature of the document I was signing.

That I have never joined any union. I am not a member of Bakery Confectionary Food Manufacturing and Allied Workers Union.

That’s all I wish to state.

Benjamin Kipkorir Ngeno

ID. No. xxxx

Signed”

76. Another letter from Philip Mutua is reproduced below –

“07-Nov-2019

Philip Mutua

ID. xxxx

Box 5

Masii



Human Resources Manager

Monking Bakers

BOX 5,

Masii

Dear Madam/sir

RE: Incitement on 24<sup>th</sup> October (sic) 2019

The above subject matter refers.

I apologise for the incident that took place on 24/11/2019. We were led by one of our staff David Mwove who incited us to work saying that the work procedures were not fair. He further asked us to sign a document saying that he would present to our Manager Madam Betty.

On 29<sup>th</sup> October 2019, I came to learn through our Manager that what we signed were union registration papers. The same information was not disclosed to me at the point of signing the document. I did not know the nature of the document I was signing.

That I have never joined any union. I am not a member of Bakery Confectionary Food Manufacturing and Allied Workers Union.

That's all I wish to state.

Philip Mutua

ID. No. xxxx

Signed”

77. The letter from Francis Ndolo is also reproduced below –

“Francis Ndolo Mutiso

ID. xxxx

O Box 5

Masii

Human Resources Manager

Monking Bakers

Box 5,

Masii

Dear Madam & Sir

RE: Incitement on

The above subject matter refers.

I apologise for the incident that took place on 24<sup>th</sup> October.

We were led by one of our staff who incited us to work saying that the work procedures were not fair. He further asked us to sign a document saying that he would present to our Manager Madam Betty.



On 29th/10/2019 I came to learn through our Manager that what we signed were union registration forms. The same information was not disclosed to me at the point of signing the document I did not know the nature of these documents. That I have never joined any union and I am not a member of Bakery Confectionary Food Manufacturing and Allied Workers Union.

That's all I wish to state.

“Francis Ndolo Mutiso

ID. xxxx

Signed”

78. The letter from Felix Kiluu is similar to the one from Francis Ndolo word for word.
79. It is obvious from the letters that the employees were copying the same from another document presented to them by the Manager whom they state they learned from that what they signed was a union membership form.
80. Of course, the contents of the letter cannot be true as what the employees signed which is attached as Claimant's annexure 1 has the name of the union at the title of the page signed by the employees. The top of the form reads –

We the undersigned, hereby acknowledge that we are members of the Bakery, Confectionery, Food Manufacturing And Allied Workers' Union (kenya)”

81. I am inclined to believe the version of the union that as soon as the Respondent learned that the employees had joined membership of the union through the check off forms (FORM 2), the workers whose names appeared in the forms were summoned to the office of the Manager, Betty Musumbi and directed to recant their union membership. That when they refused, they were sent to the security office where they were directed to either renounce membership of the union or be denied access to the workplace.
82. Indeed, Raymond Nzioka in his affidavit sworn on 26<sup>th</sup> November 2019 admits that the employees had not been paid salary from October 2019 as at the date of the affidavit. At paragraph 13, therefore he depones:

“ 13. That the allegations that the Claimants have not been paid their salaries are not true and the Respondent confirms to this court that the salaries for the Claimants have not been paid to the month of October 2019.

83. Paragraph 7 to 12 of Nzioka's affidavit sworn on 26<sup>th</sup> November 2019 is proof of the Respondent's coercion of employees and interference with their right to freely associate or join and participate in activities of the union as enshrined in Articles 36 and 41 of *the Constitution* as well as Sections 4 and 5 of the *Labour Relations Act* and Section 46 of the *Employment Act*.
84. From the foregoing, it is my finding that at the time of seeking recognition by the Respondent on 30<sup>th</sup> October 2019, the Claimant had recruited more than 51% of the unionisable employees of the Respondent and is therefore entitled to be recognised by the Respondent.



## Union Dues

85. Section 48 of the [Labour Relations Act](#) provides for deduction and remittance of union dues as follows:

8. 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.

86. Having found that the Claimant had properly recruited the Respondent’s employees, I find that the Respondent is under statutory duty to deduct and remit union dues from any employee who signed the check off form (Form S) and to continue deducting and remitting to the Claimant dues from the wage of any employee who signs the form even in the future, taking into account the fact that recruitment is an ongoing exercise.

## Conclusion

87. Having found that the Claimant recruited more than a simple majority of the Respondent’s employees, who had signed the check off forms, I make the following orders:



1. A declaratory order do and hereby issue directing the Respondent to forthwith execute the Recognition Agreement in the form and model presented to it by the Claimant within 14 days of delivery of the Judgment herein;
2. An order do and hereby issue directing the Respondent to forthwith commence deduction and remission of union dues in respect of employees who have acknowledged union membership;
3. A permanent injunction do and hereby issue restraining the Respondent henceforth against victimization, intimidation and unlawful termination of employment of employees on account of their union membership;
4. The Claimant is awarded costs assessed at Kshs.100,000/=.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 26<sup>TH</sup> DAY OF MAY 2022**

**MAUREEN ONYANGO**

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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 *Civil 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.

**MAUREEN ONYANGO**

**JUDGE**

