



**Nissan Kenya Savings and Credit Cooperative Society Limited v Crown Motors Group  
(Cause E217 of 2021) [2022] KEELRC 4013 (KLR) (29 September 2022) (Ruling)**

Neutral citation: [2022] KEELRC 4013 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E217 OF 2021  
J RIKA, J  
SEPTEMBER 29, 2022**

**BETWEEN**  
**NISSAN KENYA SAVINGS AND CREDIT COOPERATIVE SOCIETY  
LIMITED ..... CLAIMANT**  
**AND**  
**CROWN MOTORS GROUP ..... RESPONDENT**

**RULING**

1. The claimant is a Co-operative Society, registered under the [Co-operative Society act](#), cap 490 of the Laws of Kenya.
2. The respondent is a duly registered limited liability company.
3. The claimant filed the statement of claim on March 10, 2021. It is pleaded that from the year 2015 when the claimant was registered, and running through to the year 2020, the claimant garnered members, exclusively from the respondent's employees.
4. The employees requested the respondent, to deduct from their salaries, contributions, shares and loan repayments, and remit to the claimant. Deductions were made under section 19[1] [g] of the [Employment Act](#), 2007.
5. The claimant is aggrieved, because on September 24, 2020, the respondent ceased deducting from the employees' salaries and remitting in favour of the claimant, contributions, shares and loan repayments.
6. It is alleged that the default by the respondent is an existential threat to the claimant; default has caused disruption of loan arrangements between the claimant and its members; and that default, is in breach of contract between the claimant and the respondent.
7. The court is urged to grant judgment in favour of the claimant, as follows: -



- a. The respondent is compelled to deduct from its employees' salaries, and remit to the claimant, such amounts as the employees have requested to be deducted.
  - b. General or compensatory damages for breach of contract.
  - c. Costs and interest.
8. The respondent filed a notice of preliminary objection dated June 16, 2021, stating that the court does not have jurisdiction to hear and determine the claim.
  9. It was agreed by the parties that preliminary objection is considered and determined on the strength of written submissions, which the parties confirmed to have filed and exchanged, at the last mention in court, on June 7, 2022.
  10. In brief, the respondent anchors its preliminary objection on Article 162 [2] of the *Constitution* and Section 12 [1] and [2] of the *Employment and Labour Relations Court Act*, 2011. Leading judicial authorities, *Owners of the Motor Vehicle Vessel 'Lillian S' v Caltex Oil [Kenya] Limited*, [1989] and *Samuel Kamau Macharia & Another v. Kenya Commercial Bank Limited & 2 Others* [2012] e-KLR, have been invoked by the respondent. It is submitted that the claimant and the respondent are not in an employer-employee relationship; and there is no contract between the Parties.
  11. The claimant cites sections 76 of the *Co-operative Societies Act* cap 490, in persuading the court to find that this claim does not fall within the jurisdiction of the co-operative Tribunal. The subject matter is not in the purview of the said tribunal. The claimant does not claim from its members, and the dispute does not involve a member of the claimant, against another member. The claimant relies on *Egerton University Sacco Society Limited v Egerton University and Another* [2020] e-KLR and *Kivi Savings and Credit Co-operative Society Limited v Kivi Limited* [2017] e-KLR, in urging the court to find that it has jurisdiction, the dispute being one for recovery of civil debt.

**The Court Finds: -**

12. The submissions by the claimant do not answer the preliminary objection, which is: that the court does not have jurisdiction, under article 162 [2] of the *Constitution*, and section 12[1] and [2] of the *Employment and Labour Relations Court Act*.
13. The claimant's resort to the *Co-operative Societies Act*, is totally misapprehended. The preliminary objection does not allude to the application of the *Co-operative Societies Act* to the dispute. It is difficult to see why the claimant drags in that act, instead of answering the preliminary objection, as has been raised by the respondent.
14. The claimant is not among the persons who are allowed to present disputes before this court, under section 12 [2] of the *Employment and Labour Relations Court Act*. It has no capacity to act for the employees of the respondent. It is not a trade union, or a law firm, to bring a dispute involving the respondent and its employees. The court does not have not have jurisdiction *ratione personae*, in a matter presented by a co-operative society, on behalf of employees of the respondent.
15. The dispute revolves around deduction of certain amounts from employees' salaries. The court would have subject-matter jurisdiction or jurisdiction *ratione materiae*, as deduction from employees' salaries is a matter clearly regulated by the *Employment Act*, and contemplated by the *Labour Relations Act*, 2007.
16. Section 19 of the *Employment Act* as correctly cited by the claimant, allows employers to deduct from employees' salaries, on certain occasions and conditions, listed under that provision. Section 48 and



49 of the *Labour Relations Act*, allow employers to deduct trade union dues and agency fees, from employees' salary. These acts of parliament are among the labour laws whose administration falls in the jurisdiction of the *employment and labour relations court act*, and this court has jurisdiction on the subject matter.

17. The claimant is however, not the correct party, to present this subject matter before this court.
18. It is neither an employer, or employee, or a government agency, seized with the capacity to present a dispute on behalf of the employees of the respondent, more so, in its own name.
19. It does not have any contract with the respondent. There can be no breach of contract, and pursuit of damages and compensation, without a contract. The employment contract is between the respondent and its employees. A dispute relating to the employees' salary is a matter between the respondent and the employees. The claimant is a stranger to the employment contract, and cannot come before the court to enforce deductions on the employees' salaries. The claimant is not recognized as a representative of the employees. It does not have agency rights to act for the employees. It has no role in law, the employment contract, any recognition agreement, or any collective agreement. It is a total stranger, to the contracts of employment, subsisting between the respondent and its employees.
20. The claimant appears to misapprehend its role as a co-operative society, with respect to the employment rights and obligations of respondent's employees. It does not draw a line between a trade union and a co-operative society. The claimant is not a trade union, and what is before the court, is a claim which is presented in exercise of illegitimate trade union activity. The claimant has no capacity whatsoever, to represent the employees of the respondent, on a matter relating to deduction of their salaries.
21. Not only is the claimant divested the capacity to lodge the claim; it is divested the capacity to represent employees of the respondent in court.
22. Let the employees of the respondent who are aggrieved by the cessation of deductions on their salaries come to court directly, in person, through an advocate, or a trade union of their choice, and enforce their contract with the respondent, if they are minded to do so.

**It is Ordered: -**

- a. The preliminary objection is upheld.
- b. The claim is dismissed.
- c. Costs to the respondent.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 29<sup>TH</sup> DAY OF SEPTEMBER, 2022.**

**JAMES RIKA**

**JUDGE**

