



**Union v Lake Treasure Limited (Cause E080 of 2021)  
[2022] KEELRC 4119 (KLR) (28 September 2022) (Judgment)**

Neutral citation: [2022] KEELRC 4119 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE E080 OF 2021  
S RADIDO, J  
SEPTEMBER 28, 2022**

**BETWEEN**

**KENYAN UNION OF COMMERCIAL FOOD AND ALLIED  
WORKERS ..... CLAIMANT**

**AND**

**LAKE TREASURE LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Kenya Union of Commercial, Food & Allied Workers (the union) recruited employees of Lake Treasure Ltd (the respondent) between June and October 2020, and it severally forwarded to it forms(s) and sought to be granted recognition and the commencement of deduction of monthly union subscriptions.
2. The respondent did not consider the union's request favourably, which prompted the union to report a trade dispute to the cabinet secretary, labour.
3. The cabinet secretary appointed a conciliator, and he took representations from the parties and issued a report dated July 14, 2021.
4. In the report, the conciliator made a finding that the union had achieved a 43.5% instead of the simple majority threshold outlined in section 54(1) of the *Labour Relations Act* and thus did not merit recognition (74 employees out of 170).
5. The conciliator, nevertheless, recommended that the respondent commence deduction of monthly union subscriptions as the deductions were not contingent upon a simple majority threshold.
6. The union did not accept the findings and recommendations and moved to court on November 28, 2021.



7. The respondent filed a response on January 6, 2022, and on 28 March 2022, the court scheduled the hearing for May 19, 2022.
8. When the cause was called for a hearing on the scheduled date, the union indicated that it would not call any witness and would rely on the record and submissions to be filed. The Respondent also indicated it would file submissions.
9. The union filed its submissions on July 4, 2022 and the respondent on August 30, 2022.
10. The court has given due consideration to the record.

### **Recognition**

11. In the memorandum of claim, the union contended that it had recruited 100 out of a possible 120 unionisable employees and that the conciliator had instead put the total number of employees at 170.
12. The union did not place any evidence before the court to show that the respondent had 120 unionisable employees. The source of the contention was not revealed.
13. The form s(s) filed in court are the same records which were placed before the conciliator.
14. The conciliator has been given fact-finding powers under the *Labour Relations Act* and *Labour Institutions Act*. In that respect, he established that the respondent had 170 employees and that the union had only recruited 74.
15. The union has not put before the court any convincing data or records to impugn the findings by the conciliator.
16. The court will consequently agree with the conciliator and find that on the state of the evidence before it, the union had not achieved the threshold contemplated by section 54(1) of the *Labour Relations Act* to be granted recognition.

### **Union subscriptions**

17. The commencement of deduction of monthly union subscriptions is not dependent on a trade union achieving a simple majority membership, as argued by the respondent.
18. The respondent admitted in its submissions that the union had recruited 73 employees. Since the cabinet secretary issued Gazette Notice No 11153 of 8 August 2013 and Gazette Notice No 6912 of 2 September 2016, the respondent is under an obligation to commence the deduction of monthly union subscriptions.
19. Considering the dynamics of the employment scene, the respondent should, in good faith, commence the deduction of the monthly union subscriptions from such of the 73 employees who are still in its employment.

### **Conclusion and Orders**

20. The court finds and declares:
  - i. The union has not achieved a simple majority threshold for recognition.
  - ii. The respondent to commence monthly deductions of union subscriptions of the 73 employees still in its employment within 30 days, failure to which it will meet the dues from its own resources.



21. The orders herein do not stop the union from going back to the drawing board on the recruitment of more members from the respondent to achieve the simple majority requirement.
22. Considering the anticipated social partnership between the parties, no order on costs.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 28TH DAY OF SEPTEMBER 2022.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

**Appearances**

For Union Mr Macharia, Industrial Relations Officer

For Respondent Mr Oduor instructed by P. Ogendi & Co. Advocates

Court Assistant Chrispo Aura

