



**Kenya Union of Commercial, Food and Allied Workers v Daima Sacco Society Ltd
(Cause E032 of 2021) [2022] KEELRC 13136 (KLR) (31 October 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13136 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E032 OF 2021
DKN MARETE, J
OCTOBER 31, 2022**

BETWEEN

**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED
WORKERS CLAIMANT**

AND

DAIMA SACCO SOCIETY LTD RESPONDENT

JUDGMENT

1. This matter was originated by way of a Memorandum of Claim dated June 11, 2021. The issue in dispute is therein cited as;
Refusal to deduct and remit union dues
2. The Respondent in a Response to the claim dated September 30, 2021 denies the claim and prays that this be dismissed with costs.
3. The claimant’s case is that the parties relate by a way of mutual relationship through a valid Recognition Agreement and have been on Collective Bargaining Agreements with the latest being that of January 1, 2019 to December, 2020.
4. The claimant’s further case is that in 2020, the CEO of the Respondent was keen to alter/change clause No 35 of the Collective Bargaining Agreement on medical allowance and cover which move was rejected by the claimant.
5. Upon refusal of the change on the Collective Bargaining Agreement above, the Respondent stopped union deductions, ostensibly to punish the claimant union. She puts it thus;
 10. On March 17, 2020 the claimant addressed the Respondent in regards to the union dues for March 2020. See App 3



11. On March 27, 2020 the Respondent responded to the Claimant's letter indicating that from the beginning of January 2020 the management will not be in a position to deduct and remit union dues on behalf of the claimant's members. See App 4
 12. On May 19, 2020 the claimant again addressed the Respondent demanding payment of union dues as per Section 48 of *Labour Relations Act 2007*. See App 5.
 13. On May 26, 2020 the Respondent addressed the claimant insisting that the claimant should collect the union dues from the members since the Respondent has stopped deductions. See App 6
 14. The Respondent continued to be adamant in regards to union dues remittances and on June 15, 2020 the claimant again addressed them in detail on this issue. See App 7
6. The matter ultimately ended at conciliation and a meeting was set for September 16, 2020 and a follow-up on November 4, 2020 but no agreement was received.
7. The claimants other case is a reliance on Section 48, *Labour Relation Act, 2007* which provides as follows;

"48.

- (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.

8. She prays as follows;

- i. An order do issue directing the Respondent to remit union dues of Kshs 11,374.00 per month for the months of January 2020 to date of judgment.
- ii. An order do issue directing the Respondent to pay/remit union dues from their own resources for the month of January 2020 up to the date of judgment at the rate of Kshs 11,374.00 per month.
- iii. An order do issue directing the Respondent to pay interest in (i) and (ii) above at court rate from January 2020 until full payment.
- iv. An order do issue directing the Respondent to commence deduction and remittance of union dues from the date of judgment and to continue doing so on monthly basis.
- v. An order do issue restraining the Respondent from coercing, intimidating and harassing claimant's members as a result of this matter.
- vi. Cost of the claim be awarded in favour of the claimant.

9. The Respondents case is one of denial of the claim.

10. The Respondents case is a denial of the claim to a mutual agreement and Collective Bargaining Agreement and avers that this issue has been raised severally as it, as it were, never existed and had been issue ridden.

11. It is her other case that all deductions were made and remitted until on issue of membership case. She denies notices on the subject in toto. She puts it thus;

8. It should further be notes that the Respondent supports the Claimant's CBA but it should be clear on the rules of engagement so as not to put the Respondent in jeopardy.
9. It is trite law than an employer shall recognize a trade union if the trade union represents more than half of the unionisable employees in an Employment setting. The threshold to meet is a representation of 51% of unionisable employees within an employment setting.



10. Section 54(1) of the *Labour Relations Act* gives the test to be applied in considering whether a Trade Union should be granted recognition in an Employment setting. The same is as hereunder provided for ease of reference.

“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.”

12. The Respondent further relies on the authority of *Abyssinia Iron & Steel Limited v Kenya Engineering Workers Union* (2016) eKLR, where the court observed thus;

“To be recognised as the representative trade union of the workers of a person or entity, section 54 of the Labour Relations Act stipulates that the minimum number of workers willing to join the union must be a simple majority or 51% of the work force.”

13. The claimant does and files a rebuttal to the response as follows;

14. Section 48 (1) of the *Labour Relations Act, 2007* provides as follows;

48 (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.

15. The parties variously came to court until March 8, 2022 when they agreed on disposal by way of written submissions.

16. The issues for determination therefore are;

1. Whether the parties are tied up to a Collective Bargaining Agreement?
2. Whether the Collective Bargaining Agreement, if at all, binds the Respondent to remission and deduction of union dues?
3. Whether there are union dues owed to the claimant?
4. Whether the claimant is entitled to the relief sought?
5. Who bears the costs of this cause?

17. The 1st issue for determination is whether the parties are tied up to a Collective Bargaining Agreement. The claimants written submissions dated May 4, 2022 are a reiteration of her case. It is her case and submission that the Respondent has been deducting union dues from her members on a monthly basis for 29 years.

18. The claimant further submits that the genesis of this dispute arose in march 2020 when the Respondent CEO wanted to make amendments on the CBA which was rejected. Union dues deductions were estopped thereon.

19. This matter remained unresolved even with the involvement of a conciliator. Her further case comes out as follows;

- i. No member of the claimant union has withdrawn their membership from the union.



- ii. Throughout the years the Respondent has been deducting union dues and remitting in good time without issues.
- iii. Payment of union dues should not be connected with anything as a condition as Collective Bargaining has its own procedure and processes.
- iv. No condition should be laid down by the Respondent to the claimant for the union dues to be deducted and remitted so long as the Respondent's employees are members of that specific union.
- v. The Respondent claim that they stopped deduction due to lack of document is a claim without any basis in law and in fact.
- vi. During this pull and push on union dues, the Respondent has intimidated the workers to an extent of workers leaders resigning from being shop stewards.
- vii. The Respondent's action to stop deduction and remittance of union dues is criminal in nature with a legal penalty under Section 19 (1) (f) and (g) and 19(5) of the [Employment Act, 2007](#).
- viii. The Respondent is doing this so as to frustrate the claimant's members with a view of destabilizing union membership in their establishment.
 - i. That the CBA was functional and implemented as so long the members and the dues were clearly stipulated.
 - ii. The Respondent indicated clearly the issues of membership and the dues to the claimant.
 - iii. The Respondent does not run the daily activities of the claimant and cannot ascertain the membership of its employees to the claimant.
 - iv. The Respondent raised the issues which fell on deaf ears as it is now clear that the claimant needs is just money.
 - v. The Respondent has stated clearly that proper documentation should be provided to show members who are members still and the dues owed.
 - vi. The Respondent has been at logger heads with the employees as they claim they are no longer members, while others claim they have never been members at all and their dues ought to be refunded.
 - vii. The issue of proper documentation should not cause any wars as the Respondent deems that the claimant must have a proper record and it is just a matter of providing the Respondent with the same to facilitate the finance office in implementing its duties.
 - viii. The Respondent has no interest in the union membership, furthermore it is not the only institution with members in the claimant and its employees and members are not large enough to destabilize the union membership.



- ix. That no evidence has been provided with the allegation of an intimidation of their leaders and their resignation has nothing to do with the Respondent.
- x. That documents are proof in law, a position that the claimant seems to hold that the Respondents claim hold no merit in law and fact, the law in fact states and dictates that documentation is evidence, so providing the said documents should not create such a fuss.
- xi. The respondent contends that instead of rushing to court under the cover of non-payment and intimidation they should provide proper documentation to allow proper payment and submitting of actual member dues.
- xii. That further to the foregoing, the Respondent is protected by law as much as the claimant from harassment and court intimidations and the same is recognised under law.
- xiii. The Respondent joins issue with the entire averments made in the Memorandum of claim and shall put the claimant to strict proof thereof.

20. The Respondents witness statement dated 28th April, 2022

21. It is the Respondent's submission that the claimant has not recruited a simple majority as required under Section 54(1) of the *Labour Relations Act* for the following reasons;

- a) The claimant has blatantly refused to issue the Respondent with proper check off forms of its members.
- b) The list relied upon by the claimant is not properly constituted as it bears no signatures of the members and does not highlight the Identity card numbers for some of the members.
- c) The Members in the list relied upon by the claimant are the same person denying being members of the claimant and accusing the Respondent of unjustifiably deducting their salaries.
- d) In the very unlikely event that the claimant's list is upheld as a proper list of its members, it does not constitute the simple majority of the claimants unionisable employees.

22. There is overwhelming evidence of a collective Bargaining Agreement inter partes. This is demonstrated by the annexed CBA inter partes for the period 2019 to 2020. I therefore find that the parties were tied to and bound by the CBA.

23. The 2nd issue for determination is whether the Collective Bargaining Agreement, if at all, binds the Respondent to remission and deduction of union dues. It is now established that a CBA existed inter partes. The next issue is a determination of the efficacy of the CBA in the operations of the parties. The claimant has demonstrated that the Respondent deducted and remitted union dues all the way upto January, 2020 when this was stopped. The Respondent's position is that there is no clarity on membership and the claimant has not made this better by her refusal to remit union membership



records to her. Yet, the employer was not remitted or forwarded any notices of withdrawal of union membership in accordance with Section 48 (8) of the *Employment Act, 2007*.

24. This is a case of sour grapes. While there is in existence a subsisting CBA, the Respondent has gone out on a witch hunt and allegations on matters covered by the CBA. In as much as the claimant has adduced documentary evidence of a subsisting CBA and union dues deductions, the Respondent remains put. It is therefore my finding that the Respondent is bound to deduct and remit union dues to the claimant under the subsisting CBA. The claimant's case in favour of deductions and remittances supersedes the Respondents denial of the same.
25. The 3rd issue for determination is whether there are union dues owed to the claimant. On a finding on dues owing in terms of the CBA, this comes out positively. The claimant is owed union dues from February, 2020 to date.
26. The 4th issue for determination is whether the claimant is entitled to the relief sought. She is. On account of success on issues number 1, 2 and 3, the claimant becomes entitled to the relief sought.
27. I am therefore inclined to allow the claim and order relief as follows;
 - i. The Respondent be and is hereby ordered to meet and remit union dues at Kshs 11,374.00 per month for the months of February, 2020 to date.
 - ii. The amount payable shall be Kshs 11,374.00 x 34 months =386,716.00
 - iii. The amount of union dues owing shall, in the absence of having been deducted be met out of the Respondents coffers and accounts.
 - iv. The Respondent be and is hereby ordered to forthwith institute union dues deductions and remissions to the claimant.
 - v. That the Respondent be and is hereby ordered to maintain and sustain good industrial relations at the work place.
 - vi. The costs of the claim shall be borne by the Respondent.

DATED AND DELIVERED AT NYERI THIS 31ST DAY OF OCTOBER 2022.

D.K.NJAGI MARETE

JUDGE

Appearances

1. Miss Macharia for the Claimant Union.

2. Mr. Muthoni instructed by Guantai & Associates Advocates for the Respondents.

