



**Kenya Petroleum Oil Workers Union v Kenya Pipeline Company Limited  
(Cause 6 of 2020) [2022] KEELRC 12787 (KLR) (6 October 2022) (Judgment)**

Neutral citation: [2022] KEELRC 12787 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE 6 OF 2020  
HS WASILWA, J  
OCTOBER 6, 2022**

**BETWEEN  
KENYA PETROLEUM OIL WORKERS UNION ..... CLAIMANT  
AND  
KENYA PIPELINE COMPANY LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant sued the Respondent by a memorandum of claim dated 3<sup>rd</sup> February, 2020, alleging non-compliance by the Respondent to remit Union dues despite receiving check off forms.
2. The Claimant states that it has a valid recognition Agreement and a duly registered Collective Bargaining Agreement(CBA) for 2017- 2021. It is the Claimant’s case that it recruited 44 members, being Respondent’s employees, on various dates and forwarded check off forms for deduction of Union dues that was to commence on 15<sup>th</sup> February, 2019.
3. At the end of the said month, no dues were remitted to the Union. The Union then forwarded additional 165 members to the Respondent on 11<sup>th</sup> March, 2019 and requested for a meeting on the 4<sup>th</sup> April, 2019 to discuss on the additional members and find out the reason the Respondent failed to remit Union dues for the 44 members earlier forwarded to them.
4. A reminder letter was sent to the Respondent on the 29<sup>th</sup> March, 2019, however no action was forthcoming from the Respondent informing the decision by the Claimant to report industrial dispute to the Ministry of labour. The Ministry appointed DK Njagi to conciliate over the issue.
5. A meeting was convened by DK Njagi and parties invited to make their submissions, however, the Respondent failed to make any submissions and the meeting was adjourned.
6. On 11<sup>th</sup> July, 2019, the Respondent requested for a copy of the list of the recruited members, which was supplied to them however no union dues were remitted to them. Consequently, the Claimant



- requested the conciliator to issue them with a certificate under section 69(a) to enable them file this case but none was issued.
7. On 15<sup>th</sup> October, 2019, the Respondent requested for a copy of the Claimant's constitution and on 6<sup>th</sup> November, 2019, it wrote to the conciliator indicating its unwillingness to deduct Union dues from employees in its Morendat branch.
  8. The Claimant now seeks for the following reliefs;
    - i. That the honorable Court be pleased to Order the Respondent to remit the sum so deducted as Union Dues to the Claimant's Bank Account at Standard Chartered Bank, Moi Avenue, Account Number. xxxx.
    - ii. The Honourable Court be pleased to grant permanent orders restraining the Respondent or its agents from victimization, harassing, intimidating current and future members of the Union and or changing their terms and conditions of employment without consulting the Claimant Union.
    - iii. That the Honourable Court finds and Holds that all unionisable employees at Morendat Institute of oil and Gas are eligible to join the Claimant Union and participate in her activities.
    - iv. The Honourable Court finds and holds that the total sum of Union dues in arrears from February, 2019 to the date of judgement is payable to the Claimant by the Respondent with interest at Court rates.
    - v. The Honourable Court be pleased to order the Respondent to immediately commence deductions from all the signed up members of the Claimant Union.
    - vi. That the Honourable Court be pleased to order the Respondent to submit print outs of Union dues deductions from their employees who are members of the Union every month.
    - vii. The Honourable Court be pleased to issue such further Orders and directions as may be necessary to give effect to the foregoing Orders and or favour the cause of justice.
    - viii. Orders of costs of the suit be issued against the Respondent.
  9. In response to the claim, the Respondent filed a replying affidavit deposed upon by Emily, W Thathi, the senior Human Resource officer of the Respondent.
  10. In the said affidavit, the Respondent admitted receiving the Claimant's letter of 15/2/2019, forwarding check off forms for deduction of Union dues for 44 employees, out of which 40 were employees of Morendat institute of Oil and gas (MIOG) and Morendat Training Conference Centre (MTCC).
  11. She stated that the Respondent declined to deduct the Union dues from the aforementioned employees because the current CBA only gave the Claimant level of representation to persons in job groups 10 to 14B, whereas the 44 employees were not within such job bracket thus not eligible for their dues to be deducted and submitted to the Claimant before amended are made to the CBA to enlarge the base of representation.
  12. Moreover that the 40 members from MTCC and MIOG , though affiliated to the Respondent, worked in Hospitality industry and not in the Oil and Gas industry covered by the Claimant.
  13. The Respondent avers that it participated in the conciliatory process and was served with a letter titled "refusal to deduct Union dues from 209 members", which membership had increased and upon requesting for more particulars and requesting for a meeting, one was convened and they learnt on the



due date that another issue on alleged underpayment of 44 employees at Morendat was raised, forcing them to seek time to respond and revert back.

14. Contrary to the allegation by the Claimant, the Respondent states that they requested for a copy of the Claimant constitution to enable them prepare their submissions on the issues raised, which constitution was never served upon the Respondent despite several requests.
15. The Respondent avers, while the matter was still pending for conciliation and before obtaining a certificate to proceed to Court, the Claimant filed this suit, as such that this case is premature before the Court and urged this Court to dismiss this claim and or revert it back to conciliation for hearing and determination.

### **Hearing.**

16. During hearing, George Okoth Omolo, the Claimant's General Manager testified as CW-1. He adopted his witness statement of 13/10/2021 and in summary stated that the union recruited 209 members from the Respondent's employees and forwarded check off forms to enable Respondent remit Union dues. He testified that since the Respondent did not remit the dues as required, they referred the matter for conciliation which did not bore any fruits. He urged Court to compel the Respondent to deduct and remit Union dues.
17. Upon cross examination by Wachira Advocate, the witness testified that he forwarded the 209 check off forms in batches. He stated that there are three batches and the first one was for Susan and Stella of job group 13 and 10 respectively, however the rest of the batches did not indicate the job group. He testified that the CBA between the Union and the Respondent was to cover employees from job group 10 to 14B, which all 209 employees fall within that bracket.
18. Upon further cross examination, the witness denied that the issue raised between the Respondent mutated and maintained that it was for failure to deduct and remit Union dues. He also maintained that Morendat was is a department of the Respondent that deals with oil and gas.
19. The Respondent's Senior Human Resource Officer, Emily Gathi, testified as RW-1. She adopted her statement of 20/2/2020 and maintained that the employees appearing in the check off forms do not fall under job group 10 to 14B which the CBA between it and the Claimant is anchored. The witness added that Morendat is indeed a department of the Respondent but under the Hospitality industry which does not operate on strict sense with Oil and Gas as contemplated in the CBA between the parties herein.
20. Upon cross examination by Onyanyi Advocate, the witness testified that all their employees are placed on job groups but such records are not in Court. The witness testified further that Morendat is wholly owned by the Respondent and confirmed that there is an active CBA between the Respondent and the Claimant.
21. On re-examination, the witness testified that save for Stella and Susan the rest do not have job groups and that they are not covered under clause 6 of the CBA . she stated that Morendat is an affiliate of Kenya Pipeline Company.

### **Claimant's Submissions.**

22. The Claimant submitted from the onset that it has recruited 209 unionisable employees of the Respondent and since they have a recognition agreement and a CBA between them the Respondent ought to have acted on the check off forms and deduct the Union dues and remit to Claimant in accordance with section 48(2) of the *Labour Relations Act* and Section 19(1)(f) of the *Employment Act*.



It was argued that deduction of Union duty is a sacrosanct duty imposed upon the employer and failure to act on it would infringe on Article 41(2) of *the Constitution*. To support this argument, the Claimant relied on the case of *Kenya Quarry and mine workers Union v Transfleet Limited* [2021] eKLR where the Court emphasized on the need by the employer to deduct Union dues and remit to avoid being in violation of Article 41 of *the Constitution*.

23. On whether the Claimant had met the threshold to recruit, it was submitted that the checkoff forms forwarded to the Respondent on 15<sup>th</sup> February, 2019 and 11<sup>th</sup> March, 2019 is enough proof that they met the threshold. In this they relied on the case of *Banking Insurance Finance Union(K) v Kenya Revenue Authority*[2018] eKLR.
24. The Claimant argued that the allegation that the recruited members did not fall in the category under the CBA is unfounded as the said employees did not have job groups which is the sole responsibility of the Respondent to grade its employees.
25. On whether the matter was prematurely filed, the Claimant submitted that it had exhausted all its internal dispute resolution mechanisms including conciliation, it argued that the Respondent, by its letter of 15<sup>th</sup> November, 2019, indicate his decision of refusing to deduct Union dues as such there was nothing left for determination by the conciliator. To support its stand, the Claimant relied on the case of *Geoffrey Muithinja Kabiru and 2 others v Samuel Munga Henry and others* [2015] eKLR.
26. It was further argued that the conciliatory process took more than 30 days' period contemplated under section 69(b) of the *Labour Relations Act*, without any tangible outcome therefore the process was no longer tenable in resolving their issues.
27. In conclusion the Claimant urged this Court to allow the claim as prayed and order the Respondent to personally pay for deduction not made from February, 2019 to the date of this judgement. To justify its prayer, the Claimant relied on the case of Kenya National Union of Nurses Busia County Public Service Board v Busia County Public Service and Busia County Government and the case of Kenya Union of Nurses v Muranga County Public Service Board and another [2021] eKLR.

### **Respondent's Submissions.**

28. The Respondent submitted on only one issue; whether the employees sought to be recruited by the Claimant Union qualify to be members of the said Union. It was argued that among the 44 employees forwarded to the Respondent only 2 had job group indicated in their employment document and the 40 did not have job group indicated against their name as such they were not unionisable employees and not under the bracket contemplated under clause 6 of the CBA which required recruitment to be done to unionisable employees under job group 10 to 14(B) of the CBA. Therefore, that the failure by the Union to recruit employees under the stated job group made it untenable for them to deduct Union dues, as to do so would be go against the very CBA. In support of this argument they relied on the case of *Kenya Chemical and Allied Workers Union v Bamburi Cement Limited* [2017] eKLR and the case of *Duncan Mwangi and 9 others v Kenya Pipeline Company Limited; Kenya Petroleum Oil workers Union [interested party]* [2021] eKLR.
29. It was further submitted that the issue herein was filed prematurely before the conciliatory proceedings at the ministry of labour were exhausted as such the suit is frivolous and ought to be struck out till the issue at the ministry is heard and determined.
30. In conclusion the Respondent maintained that the Claimant has not made out a case warranting the granting of the Orders sought since the recruited members were not under the job bracket contemplated under clause 6 of the CBA.



31. I have examined all the evidence and submissions filed before me.
32. The Respondents have admitted to receiving check off forms from the Claimant requesting for deductions and remittance of union dues for 209 employees. The Respondents have however indicated that they failed to remit the dues because the job groups of the members was not known.
33. They also indicated that the members in question are in hospitality department and not covered by the CBA.
34. In this regard my reference point is Article 41 of *the constitution* which provides as follows;

“ 41. Labour relations

(1)	Every person has the right to fair labour practices.								
(2)	Every worker has the right— <table border="1"> <tr> <td>(a)</td> <td>to fair remuneration;</td> </tr> <tr> <td>(b)</td> <td>to reasonable working conditions;</td> </tr> <tr> <td>(c)</td> <td>to form, join or participate in the activities and programmes of a trade union; and</td> </tr> <tr> <td>(d)</td> <td>to go on strike.</td> </tr> </table>	(a)	to fair remuneration;	(b)	to reasonable working conditions;	(c)	to form, join or participate in the activities and programmes of a trade union; and	(d)	to go on strike.
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(d)	to go on strike.								



(3)	Every employer has the right—	
(a)		to form and join an employers organisation; and
(b)		to participate in the activities and programmes of an employers organisation.
(4)	Every trade union and every employers' organisation has the right—	
	(a)	to determine its own administration, programmes and activities;
	(b)	to organise; and
	(c)	to form and join a federation.



(a)	to determine its own administration, programmes and activities;
(b)	to organise; and
(c)	to form and join a federation.
(5)	Every trade union, employers' organisation and employer has the right to engage in collective bargaining."

35. The issue of what union to join or not join is a preserve of an individual member and this right cannot be curtailed by the union.
36. The members of the Claimant union having chosen to join the union, the Respondent cannot direct them on which union they should choose.
37. The excuse of the Respondent is in my view not dependent on the law and *the Constitution*.
38. I find the Claimants have established their case as required and I find for Claimants and grant them the following reliefs;
1. That the honorable Court is pleased to Order the Respondent to remit the sum so deducted as Union Dues to the Claimant's Bank Account at Standard Chartered Bank, Moi Avenue, Account Number. xxxx.
  2. The Honourable Court finds and holds that the total sum of Union dues in arrears from February, 2019 to the date of judgement is payable to the Claimant by the Respondent with interest at Court rates.
  3. The Honourable Court is pleased to order the Respondent to immediately commence deductions from all the signed up members of the Claimant Union.
  4. That the Honourable Court is pleased to order the Respondent to submit print outs of Union dues deductions from their employees who are members of the Union every month.
  5. The Respondents will pay costs of this suit plus interest at Court rates with effect from the date of this Judgment.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 6TH DAY OF OCTOBER, 2022.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Kogonga holding brief for Onyony for Claimants – present

Wachira for Respondents – present

Court Assistant – Fred

