



**Kenya Union of Domestic, Hotels, Educational Institutions and
Hospitals Workers v Management of Ciala Resort Hotel (Cause
E021 of 2022) [2022] KEELRC 14673 (KLR) (5 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 14673 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E021 OF 2022
S RADIDO, J
OCTOBER 5, 2022**

BETWEEN

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS
AND HOSPITALS WORKERS CLAIMANT**

AND

MANAGEMENT OF CIALA RESORT HOTEL RESPONDENT

RULING

1. On or around December 14, 2021 and January 14, 2022, the Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers (Kudheiha) forwarded Form S(s) to the Director, Ciala Resort (the Respondent).
2. Kudheiha requested the Respondent to commence the deduction of trade union subscriptions in respect of the employees who had signed the forms, but it failed to do so.
3. Consequently, on April 6, 2022, Kudheiha moved the Court, and it stated the Issue in Dispute as: Refusal to deduct and remit union dues contrary to section 19(f),(g) & (i) of the *Employment Act*, 2007 read alongside section 48 of the *Labour Relations Act*, 2007 and ministerial directive on legal notice no 195 issued by the ministry of labour and social protection.
4. Filed at the same time was a Motion seeking the Court's intervention to compel the Respondent to commence the deductions and remittance of the union subscriptions to Kudheiha .
5. On May 15, 2022, the parties appeared in Court and informed the Court that they were negotiating. The Court directed the parties to file a consent of the negotiations were successful.
6. The parties did not reach a settlement, and on May 30, 2022, the Court directed the parties to file and exchange affidavits and submissions within set timelines.



7. The deduction and remittance of trade union subscriptions are primarily governed by section 48 of the *Labour Relations Act*.
8. It is not in dispute that the Cabinet Secretary, Labour issued Legal Notice no 195 of November 1, 2018, the Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers directing employers with more than 5 members of Kudheihia to deduct monthly union trade subscriptions and pay the same to a bank account designated in the Legal Notice.
9. It is also not disputed that 30 days had lapsed after Kudheihia sent the names to the Respondent.
10. The Respondent has also not denied that the named members listed in the Forms sent to it by Kudheihia were its employees at the material times.
11. Trade union subscriptions are made from an employee's wages. It is a cardinal principle of employment law that an employee is free to dispose of his wages in any lawful way they want. It is part of freedom of association.
12. Considering the above, the Court orders:
 - i. The Respondent to commence forthwith deduction of trade union subscriptions from its employees who have joined Kudheihia in terms of the Form S(s).
 - ii. The Respondent to remit the said deductions to the bank account designated in Legal Notice No 195 of November 1, 2018 with the October 2022 wages.
 - iii. In default of compliance with (i) and (ii) above, the accrued trade union subscriptions to be met from the Respondent's own funds/resources.
13. The Cause is to be mentioned on a date to be agreed hereinafter for further directions.
14. Considering the anticipated social partnership between the parties, no order on costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 5TH DAY OF OCTOBER 2022.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Joseph Okwach, Industrial Relations Officer

For Respondent Okoyo Omondi & Co. Advocates

Court Assistant Chrispo Aura

