



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO. 132 OF 2018**

**BANKING INSURANCE &**

**FINANCE UNION (KENYA).....CLAIMANT**

**-VERSUS-**

**WAUMINI SACCO SOCIETY LIMITED.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Claimant is a registered Trade Union to representing unionisable employees in financial institutions. She brought this suit on the 6th February 2018 seeking the following Orders:

- a) The employer to make deduction of the union dues through check-off system and remit the same to the Claimant every month as provided in law.
- b) The Respondent to pay all union dues from July 2016 to date from their own account as provided under Section 82 of the Labour Relations Act.
- c) The Respondent to sign the recognition agreement immediately.
- d) The Respondent to pay costs.

2. The Respondent filed its Statement of Response dated 7th March 2018 opposing the Claimant's case stating that the Claimant had not met the simple majority to be accorded recognition. The Respondent further stated that it had remitted union dues to the Claimant. She therefore prayed for the suit to be dismissed with costs.

3. On 25th May 2018 it was agreed by Consent of the Parties that the Suit be dispensed with by way of written submissions.

**The Claimant's Submissions**

4. The Claimant submitted that it recruited the 22 unionisable employees out of a possible workforce of 40 employees of the Respondent and served the check-off upon the Respondent on 6th December 2016 as provided under Section 58 of the Labour Relations Act. However, the Respondent did not commence deductions but starting intimidating its employees. It further submitted that despite the employees acknowledging membership and revoking their membership with any other trade union, the Respondent was hell bent to delay the signing of the Recognition agreement in the absence of any reason in failing to do so. It was there prayed on behalf of the claimant that the prayers sought be granted plus costs.

5. As regards resignation of her union members from employment, the Claimant submitted that the Respondent produced only 5 resignations letters from its employees but the Respondent had failed to deduct and remit the union dues of the remaining 17 members. The Claimant further submitted that it was not notified of any revocations under Section 48 (8) of the Labour Relations Act.

**The Respondent's submissions**

6. The Respondent in its written submissions stated that, in the year 2017 the union reported a dispute to the Minister but it was not resolved and a Certificate of disagreement was issued sometime in the month of March 2017. That thereafter the claimant brought this suit but the Respondent submitted that even as at the time of reporting the dispute at the labour office, the clamant had not recruited a simple majority of her unionsable staff as union members. That most of its staff had resigned from their jobs and the union had only 2 members whom the

Respondent accepted the in check off system. She relied on the case of *KUCFAWU v FLAMCO Ltd [2016] eKLR*.

7. The Respondent further submitted that her action of seeking approval for the deduction of the union dues did not amount to intimidation of her employee.

### **Analysis and determination**

8. The issues for determination arising from the pleadings, evidence and submissions are:

- a) Whether the Claimant has attained the threshold for Recognition
- b) Whether the reliefs sought should be granted.

### **Threshold**

9. The Claimant stated that it had recruited 22 unionisable employees but the Respondent disputed the number of unionised members stating that some of the members had already left employment. In addition, its only two of its employees were members of the Union. The Claimant in her submissions acknowledges that 5 of its members ceased to work for the Respondent and requires that the Respondent does deduct and remit the monthly dues of the remaining 17 employees. The respondent contended that she has been deducting union dues for the 2 members for the 2 members and remitting the same to the claimant but no evidence was produced to prove the alleged deduction and remittance of the said dues.

10. Section 54 (1) of the Labour Relations Act provides:

**“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.”**

11. The Court of Appeal in *Abyssinia Iron & Steel Limited v Kenya Engineering Workers Union [2016] eKLR* held:

*“To be recognized 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.”*

12. The Claimant stated, and it was not disputed, that the Respondent’s unionisable workforce comprised 40 employees. Hence, a simple majority constituting 51% of the Respondent’s employees was equivalent to 21 employees. The Claimant having acknowledged the resignation of 5 of the Respondent’s employee, this leaves the number of unionisable employees recruited at 17 out of 35 employees. A simple majority of 35 employees is 18. Consequently, from the computation, it is clear that the Claimant has not met the threshold of a simple majority membership stipulated under section 54 (1) of the Labour Relations Act for the Respondent to recognise the for purposes of collective bargaining.

### **Whether Respondent should remit the monthly deductions**

13. The Respondent states that it has been remitting the monthly deductions for 2 of its employees and submitted from the bar that the other 10 members of staff recruited were not unionisable. The Claimant states that it served the Check-off Forms upon the Respondent in 2016 but the Respondent has declined to deduct and submit the monthly dues of its employees. This is despite the employees giving consent for the deduction of the monthly dues.

14. The Respondent alleged that between the months of March 2017 and August 2017 it remitted the dues for 2 of the Claimant’s members whom the Sacco accepted the in check-off system. The Respondent stated that the other 10 members were not unionisable. No information has been provided on the other 15 members who make it 17 members. This allegation together with the allegation that a Certificate of Disagreement had been issued, were not supported. I therefore return that all the 17 employees recruited as members by the claimant were unionisable and the respondent is bound to deduct and remit their union dues to the claimant.

15. The requirement to remit the monthly deductions due to the union and that for the recognition are distinct. The Respondent has indicated that it has been remitting the monthly deductions for only 2 employees. Section 48 (2) and (3) of the Labour Relations Act provides;

**“(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."**

16. Section 48 (2) of the Act is to the effect that the deduction of the trade union dues is to be done if the trade union has more than 5 employees belonging to the union. In the present case 17 out of 35 unionisable staff were recruited but only 2 of were deducted union dues by the respondent. I therefore order the respondent to henceforth deduct union dues from the 17 union members' salaries and remit the same to the claimant. I however decline to compel the Respondent to pay the union dues from July 2016, because an employer does pay dues from its own account but from the employee's salary.

17. The foregoing view is fortified by *Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals & Allied Workers (Kudheiha) v British Army Training Unit Kenya [2015]eKLR* where Mbaru J held:

*"The question of deduction of union dues and that of recognition of the union by an employer are separated in law. Under section 48 of the Labour Relations Act, an employer is bound to remit all union dues deducted to the union account irrespective of recognition as under this part, where there are more than 5 employees in the membership of a union, the employer should make deductions and remit to the union. The deduction and remittance of union dues from employees who have acknowledged union membership should be based on the Minister for Labour making an appropriate order through Kenya Gazette indicating the account to which such union dues should be remitted. It does not require a recognition agreement between a union and an employer. The duty on the union is to submit to the employer the names and identity card numbers of the employees through the check-off forms. This is not contested as the Respondent has complied in this regard."*

#### **Conclusion and disposition**

18. I have found that the claimant did not represent a simple majority of the respondent's unionisable staff as at the time of filing this suit. I have, however, found that as at the time of filing the suit, the claimant had recruited 17 employees as her union members. Finally, I have found that the prayer for union dues backdating to July 2016 is not tenable. Consequently, I only enter judgment for the claimant compelling the respondent to henceforth deduct union dues from the salary of the current and future members of the union and remit the same to the claimant. Each party shall bear her own costs.

**Dated, Signed and Delivered in Open Court at Nairobi this 16th day of November, 2018**

**ONESMUS N. MAKAU**

**JUDGE**