



**REPUBLIC OF KENYA**  
**EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 1150 OF 2012**  
**(Before Hon. Justice Hellen S. Wasilwa on 25<sup>th</sup> May, 2015)**  
**KUDHEIHA WORKERS UNION.....CLAIMANT**  
**VERSUS**  
**AGA KHAN UNIVERSITY HOSPITAL.....RESPONDENT**

**JUDGMENT OF THE COURT**

1. The Claimants herein filed their Memorandum of Claim on 5/7/2012 through their 2<sup>nd</sup> Deputy Secretary General Mr. Samson Kioko. The issue in dispute is refusal by the management to deduct and remit union dues from over 100 members of staff.

In their Memorandum of Claim the claimants aver that they are a registered trade union registered by the Registrar of Trade Unions to represent the interests of all unionisable employees working in Domestic, Hotels, Education Institutions, Hospitals and Allied Workers (KUDHEIHA) Union.

The Respondent on the other hand is a provider of medical health care as well as educating and training medical personnel in the Republic of Kenya.

2. The Claimants have submitted that they recruited their members from the Respondents work place on diverse dates from 2<sup>nd</sup> July 2009, 24<sup>th</sup> September 2009, 19<sup>th</sup> November 2009, 18<sup>th</sup> March 2010, 5<sup>th</sup> 9<sup>th</sup>, 18<sup>th</sup> November 2010, 10<sup>th</sup> December 2010, 30<sup>th</sup> March 2011 and 21<sup>st</sup> July 2011 who filled various check-off system forms numbers 16847, 1201, 11126, 1861, 15660, 2098, 2099, 2100, 23539, 2473, 23543 and 23540 respectively all attached herein as Appendix 1.

The Claimant's members authorized the Respondent to deduct and remit their monthly subscription (union dues) into the Claimant's main account No. 1822215 Barclays Bank of Kenya, Queensway House Branch.

3. It is the Claimants evidence that the Respondents totally refused to deduct and remit the monthly subscriptions hence infringing Section 48 of the Labour Relations Act.

The Claimants aver that the Respondents insisted that they could not deduct and remit the union dues into the claimants account as a number of positions were not recognized in the Collective Bargaining Agreement and were excluded from the union representation by the Industrial Relations Charter. Reference is made to their letter Appendix 2.

4. The Claimants have submitted that the Respondents insistence that they could not deduct and remit union dues for the reasons given infringes on the rights of the employees concerned because the Industrial Relations Charter is not superior to the Kenya Constitution.

5. The Claimants aver that on 6/1/2011, they reported the existence of a trade dispute to the Hon. Minister for Labour. On 22/2/2011, the Chief Industrial Relations Officer appointed a conciliator to concile the parties. The conciliation meetings however did not bear any fruits leading to the referral of this dispute to this court.

The Claimants want this court to order the Respondents to deduct and remit the union dues as prayed.

### **The Respondent's Case**

6. The Respondents filed their Memorandum of Defence on 11/3/2015 through the Federation of Kenya Employers. They contend that they had a valid Collective Bargaining Agreement with the Claimant which covered the period between December 2007 to 31<sup>st</sup> December 2010 and thereafter another between June 2011 and December 2013.

They aver that the said Collective Bargaining Agreement intended to cover the unionisable employees of the Respondent who had acknowledged membership with the Claimant union and who had signed the check-off forms acknowledging the said membership.

7. The Respondent further avers that on or about November 2010, they received check-off forms from the Claimant seeking deduction of union dues from the Respondents new employees who had allegedly acknowledged their membership with the Claimant. They replied informing the union that several positions were not recognized by the Collective Bargaining Agreement signed by the parties and as such were excluded from union representation.

They informed the Claimants that some of the staff who had expressed interest in joining the Claimant union were governed by statutory bodies with specific mandate that joining may have affected the existing Collective Bargaining Agreement at the time and urged them to review their request in line with the legal provisions.

8. It is also the Respondents case that the nurses were not recognized in the Claimant's constitution and this is why in all the Collective Bargaining Agreement's that had been negotiated between the parties, the nurses category was not always negotiated for. It was only in 2015 that the Claimant provided their constitution where the position of nurses was provided for.

9. The Respondent avers that the union went further and reported the existence of a dispute The Respondent responded by deducting the union dues for the alleged years from employees who were under the Collective Bargaining Agreement and remitted the amounts to the Respondents bank account.

The Respondents aver that they remitted the said dues for July 2009, September 2009, November 2009, 19<sup>th</sup> March 2010, 5<sup>th</sup>, 9<sup>th</sup> and 18<sup>th</sup> 2010, December 2010, March and July 2011 save for the employees who were not unionisable. Appendix 4 are copies of schedules of the said deduction. The Respondents want this case dismissed with costs.

### **Issues of determination**

10. Having considered the submissions of the parties, the issue for determination is:

***(1) Whether the refusal by the Respondent to deduct and remit union dues from employees who have joined the Claimant union is justified.***

On this issue Article 41(2) (c) of the Constitution is clear that:

***“Every worker has the right to form, join or participate in the activities and programmes of a trade union....”.***

Under Section 48 (2) and (3) of the Labour Relations Act 2007, states:

***“(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. “***

11. From the above provision, it emerges that deduction and remittance of union dues is part and parcel of the obligation of the Respondent following the exercise by the Claimant of a right to join a union.

In this case the Claimant’s members chose to join the union and did sign forms authorizing the Respondent to deduct union dues and remit them. The refusal by the Respondent to deduct and remit these dues is an interference by the Respondent of the employees right to join and participate in the activities of a trade union. It was not the duty of the Respondent to decide which employees could join a union or not so long as they are in the unionisable category and so long as they had chosen to exercise their right as provided for under Article 41 of the Constitution.

12. It is therefore this court’s finding that the Respondent’s failure to deduct and remit union dues of employees who joined the union infringed on their right under Article 41 of the Constitution and I order that the Respondent do forthwith deduct and remit union dues for employees who have so authorised and not later than 30 days from the date of this judgment.

Respondent will further meet costs of this case.

Dated and delivered in open Court this 25<sup>th</sup> May, 2015.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Kibiru for Claimant

Molenye for Respondent