



Kenya Electrical Trades and Allied Workers Union v Kenya Electricity Transmission Co Ltd (Cause E1060 of 2023) [2025] KEELRC 2556 (KLR) (25 September 2025) (Ruling)

Neutral citation: [2025] KEELRC 2556 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E1060 OF 2023
S RADIDO, J
SEPTEMBER 25, 2025**

BETWEEN

**KENYA ELECTRICAL TRADES AND ALLIED WORKERS
UNION CLAIMANT**

AND

KENYA ELECTRICITY TRANSMISSION CO LTD RESPONDENT

RULING

1. For determination is a Motion dated 30 May 2025 by Kenya Electricity Transmission Co Ltd (the Respondent) seeking orders:
 - i. ...
 - ii. ...
 - iii. That there be a stay of execution of the orders issued herein dated 22 May 2025 pending the hearing and determination of the appeal.
 - iv. That there be a stay of proceedings in this matter pending the hearing and determination of the appeal.
 - v. That the court issues such other orders that it deems fit and just to meet the ends of justice in its case.
 - vi. That costs of this application be provided for.
2. In furtherance of the Motion, the Respondent urged the grounds that the Respondent was desirous and had filed a Notice of Appeal against the orders of the Court granted on 22 May 2025, directing that the Ministry of Labour conduct a census to establish the level of union membership; the order was to be complied with within 90 days and that the intended appeal was arguable.



3. The Respondent filed its submissions on 12 June 2025, and it submitted that it had made the application without inordinate delay; there was no direct monetary value implicated in the issues in dispute, and so the question of security for costs did not arise, and that it stood to suffer substantial loss if the orders sought were not granted.
4. On the issue of substantial loss, the Respondent cited *James Wangalwa & AMP Ar v Agnes Naliaka Cheseto (2012) eKLR* to argue that if the census proceeded, it would introduce new evidence/report, thus defeating the thrust of the appeal.
5. According to the Respondent, the census would serve to introduce new facts which were not there as of December 2023, when the Union sought for recognition, and that the net effect of allowing the census to proceed would lead to the Union introducing new evidence before the Court.
6. The Respondent further contended that the level of unionisation could not be determined through a balloting/census exercise.
7. The Union filed a replying affidavit opposing the Motion on 13 June 2025.
8. Therein, it was deponed that the Motion was a waste of the Court's time and meant to cause delay; the test for stay of execution had not been met; the intended appeal was not arguable nor would it be rendered nugatory; stay of proceedings was a grave judicial matter and the interests of justice favoured not allowing the Motion.
9. The Respondent filed a further affidavit on 18 June 2025. The affidavit reiterated earlier assertions.
10. The Union filed its submissions on 18 June 2025, wherein it cited *Kenya Wildlife Service v James Mutembei (2019) KEHC 10478 (KLR)* for the contention that:

Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore the test for stay of proceedings is high and stringent...
11. With respect to stay of execution, the Union relied on a passage in *James Wangalwa & Ar v Agnes Naliaka Cheseto (2012) KEHC 1094 (KLR)* whereby the Court held that;

No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal.
12. The Court has considered the record, Motion, affidavits and submissions and makes the following determinations.
13. One, the order for a census to be conducted was part of the hearing process, and the parties will have an opportunity to submit on the relevance and weight to be given to the Conciliator's report on the census.
14. The arguments by the Respondent on being occasioned substantial loss are therefore idle.
15. Two, *the Constitution* of Kenya and the establishing statute of this Court give pre-eminence to alternative dispute resolution. Conciliation, in this respect, is statutorily anchored in the *Labour*



Relations Act, and the Respondent would be acting contrary to the spirit of good faith and industrial harmony in snubbing the conciliation process.

16. Three, disputes concerning the recognition of a trade union by an employee should be determined expeditiously and proportionately. This is in recognition of the right of employees to associate, join and participate in the activities of a trade union. The instant dispute is now about 3 years in the Court's docket, and staying the proceedings would not be in the interest of justice.
17. It is instructive that the Court decreed on 18 March 2024 that the substantive dispute herein be heard on a priority basis.
18. Lastly, a census and/or balloting is a long-held practice given imprimatur by this Court and its predecessor in disputes concerning recognition and whether a trade union has met the simple majority threshold under section 54(1) of the Labour Relations Act.
19. The Respondent's submission that the conduct of a census through secret balloting is yet to be determined by the Court of Appeal is a red-herring.

Orders

20. The Motion dated 30 May 2025 is found without merit and is dismissed with costs.
21. The Conciliator is directed to conduct the census within the next 45 days and file a report with the Court to enable the Court give directions on a hearing on the merits.

DELIVERED VIRTUALLY, DATED AND SIGNED IN MERU ON THIS 25TH DAY OF SEPTEMBER 2025.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For Claimant Onyony & Co. Advocates

For Respondent Lutta & Co. Advocates

Court Assistant Wangu

