



REPUBLIC OF KENYA



KENYA LAW
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Banking Insurance And Finance Union v Apa Insurance Company Ltd (Cause E415 of 2025) [2025] KEELRC 2714 (KLR) (3 October 2025) (Ruling)

Neutral citation: [2025] KEELRC 2714 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E415 OF 2025
SC RUTTO, J
OCTOBER 3, 2025

BETWEEN

BANKING INSURANCE AND FINANCE UNION CLAIMANT

AND

APA INSURANCE COMPANY LTD RESPONDENT

RULING

1. Before this Court for determination is a Notice of Motion dated 5th May 2025 by the Claimant/Applicant seeking the following orders:
 1. Spent.
 2. That there be an order directing the Respondent to immediately or within 3 days of an order herein to allow the Claimant/Applicant to enter the Respondent's premises to organize, educate and recruit its (the Respondent's) unionisable employees as union members.
 3. That there be an order directing the Respondent to allow workers to be organized in union activities and programmes and to join a trade union of their choice.
 4. That there be an order directing the Respondent to immediately or within 30 days of an order herein, to comply with the settlement signed by all parties before the Conciliator.
 5. That costs of this application be in the cause.
2. The Application is supported by the grounds on its face and the Affidavit of Tom Odero, the Claimant/Applicant's Deputy General Secretary.



3. Mr. Odero avers that the Respondent, while bound by the Constitution and applicable laws, has deliberately locked out the Claimant from meeting its employees for purposes of education and recruitment into union membership.
4. He avers that on 24th April 2024, the Claimant requested the Respondent for reasonable access to its premises for purposes of conducting education and recruitment of its unionisable employees. By letter dated 27th April 2024, the Respondent declined, stating its premises were limited to operational and business meetings only and that external users were required to book and pay for space.
5. That on 4th June, 2024, the Claimant wrote to the Respondent stating the legal position.
6. According to Mr. Odero, the Respondent did not engage the Claimant further on the issue, prompting the Claimant to report a trade dispute to the Ministry of Labour on 30th July 2024. The parties attended a conciliation meeting and on 23rd October 2024, agreed to settle the dispute whereby the Respondent agreed to grant the Claimant reasonable access to its premises for purposes of conducting lawful activities of the union.
7. Mr. Odero avers that despite having agreed and signed a settlement before the Conciliator, the Respondent changed tack and blocked the Claimant union from accessing its premises. He argues that the Respondent's conduct is creating unnecessary anxiety among employees, impeding productivity, and depriving them of affordable and timely representation by the union.
8. The Respondent opposed the Application through the Replying Affidavit sworn on 23rd June 2025, by its Human Resources Manager, Yvonne Maloba.
9. Ms. Maloba concedes that the parties entered into a settlement agreement dated 6th November 2024 which allowed the Claimant access between 7:00–7:30 a.m. and after 5:30 p.m. By an email of 3rd December 2024, she directed the Claimant to liaise with the property manager to secure access. A meeting was scheduled for 6th December 2024.
10. On 5th December 2024, the Claimant was advised to pay for the venue booking, as required of both staff and outsiders. The Claimant did not make the payment.
11. Ms. Maloba states that despite non-payment, the Respondent still informed the Claimant that they were free to engage employees within the agreed timeframes, provided they did not harass staff.
12. She avers that the meeting did not proceed due to lack of quorum, though the Claimant remained in the building during morning hours attempting to recruit members.
13. Ms. Maloba states that despite the failure to settle the room fees, access was nonetheless granted.
14. According to her, the Respondent has always been willing to provide reasonable access, provided union activities do not interfere with business operations or take place during working hours.
15. In a Further Affidavit sworn on 4th June 2025, Mr. Odero disputed the Respondent's account, insisting that "reasonable access" means access to employees in their actual workplace, not in a hired venue or hotel.
16. He contends that the Respondent was obliged to notify targeted employees of the meeting, time, and venue in writing as contemplated under Section 56 of the *Labour Relations Act*. That there is no evidence placed before this court that the staff were informed of the training/education/recruitment exercises scheduled for 6th December 2024.



17. He further asserts that no harassment occurred as alleged, since the Claimant did not meet the unionisable employees.
18. The Respondent filed a Further Affidavit sworn on 11th July 2025 by Ms. Maloba. She avers that the venue offered was within the Respondent's premises and ordinarily subject to booking fees. Nevertheless, the Claimant was extended access to the venue to the Claimant without charge after they declined to settle the room fees.
19. She contends that "reasonable access" does not include the employer taking an active role by directly engaging its employees and instructing them to attend the union's meeting. In her view, this would in essence be the Respondent assisting the union in recruiting members.
20. She further avers that should another trade union approach the Respondent's employees and begin recruitment, it would be improper for the Respondent to equally take an active role and direct its employees to attend that union's meetings and recruitment drives.
21. Ms. Maloba further opines that the proper practice as contemplated under the *Labour Relations Act* is for the Claimant to recruit outside of working hours and without disruption to the Respondent's business, as was agreed in the settlement agreement between the parties herein.
22. It is her position that the Respondent has complied with the settlement agreement by granting access outside official working hours and has not created barriers to union activities.
23. That the Claimant only accessed the Respondent's premises once and has not since then returned and neither have they been barred from access as per the agreed timelines.
24. That the Respondent believes in and respects its employees' right to associate and join a trade union of their choice save for the Claimant's suggestion that the Respondent ought to take an active role in assisting them recruit union members.
25. Ms. Maloba believes that Section 56 of the *Labour Relations Act* only applies where parties have a recognition agreement and therefore the Claimant cannot purport to rely on the said provision to demand the Respondent assist in its recruitment.

Submissions

26. The Application was canvassed by way of written submissions. Both parties filed written submissions which the Court has duly considered.

Analysis and determination

27. Having reviewed the Motion, affidavits, and submissions, to my mind, the singular issue for determination is whether the Applicant has made out a case to warrant the orders sought.
28. The Claimant's grievance is that the Respondent has denied it reasonable access for purposes of carrying out lawful activities of the union by conditioning entry on payment for a meeting venue and failing to inform employees of union activities.
29. Submitting on this issue, the Claimant contends that being asked to pay for the meeting venue or to meet its employees in a hotel cannot be termed as reasonable access. The Claimant has further submitted that by failing and/or refusing to set up a specific meeting venue and failing to inform the targeted unionisable employees of the meeting date, venue and time goes against the intent and purpose of Section 56 of the *Labour Relations Act* and the settlement agreement.



30. Refuting the Claimant's position, the Respondent maintains that it complied with the settlement agreement and has not created barriers towards recruitment. The Respondent is categorical that reasonable access to a trade union does not include the employer taking an active role by directly engaging its employees and instructing them to attend the union's meeting.
31. The Respondent maintains that it has complied with the settlement agreement, that access has been provided outside working hours, and that it cannot be compelled to assist the union in the recruitment of members.
32. The Respondent further submits that under Section 56 of the *Labour Relations Act*, the employer is only required to grant reasonable access which is limited in order not to affect the employer's working hours and operations.
33. Section 56 of the *Labour Relations Act* entitles a trade union to reasonable access to an employer's premises for lawful activities, including recruitment and education, subject to reasonable conditions imposed by the employer for operational or safety reasons. Further, trade union officials or their representatives may be asked to provide proof of identity.
34. In light of the rival positions taken by the parties herein and bearing in mind the provisions of Section 56 of the *Labour Relations Act*, the logical question to ask is what amounts to reasonable access?
35. It is common ground that following the reference of the trade dispute to the Ministry of Labour and Social Protection by the Claimant, the parties signed a settlement agreement dated 6th November 2024 in which it was agreed that the Respondent will allow the Union reasonable access to its premises in order to engage unionisable employees from 7:00 am to 7:30 am and from 5:30 pm onwards.
36. The record bears that the Claimant wrote to the Respondent on 28th November 2024 proposing to visit its premises on 4th November 2024 (sic) to perform lawful union activities from 7:00 am and to continue from 5:30 pm.
37. Vide an email dated 3rd December 2024, the Respondent, through Ms. Maloba, informed the Claimant to liaise with its property manager at Apollo centre and agree on the logistics.
38. On 5th December 2024, Ms. Maloba vide email informed the Claimant that they were to pay for the venue and that the meeting would not take place unless payment was made. According to the Respondent, the meeting venue is normally paid for before use by either the staff or non-staff members.
39. In terms of Section 56 of the *Labour Relations Act*, an employer can impose conditions as to the time and place of the meeting. In this case, it is apparent that whereas the Respondent allowed the Claimant to use its premises, the same was subject to payment.
40. This Court is of the considered view that requiring a trade union to incur costs for a venue as a precondition to meeting unionisable employees cannot be deemed "reasonable access" within the meaning of Section 56 of the *Labour Relations Act*. Indeed, making access conditional upon payment cannot pass the test of reasonableness contemplated by the law. Such a requirement in my view, amounts to an unreasonable burden on the union.
41. The Claimant has further contended that the Respondent ought to have communicated with the workers regarding the said meeting to ensure their attendance.
42. In an email dated 3rd December 2024, the Claimant, through Mr. Olochike, informed Ms. Maloba that they had met the property manager and agreed to have the staff meeting on 6th December 2024 from



7:00 am to 7:30 am. He further asked the Respondent to make the necessary arrangements to ensure that all the workers are in attendance so that the proposed meeting proceeds as scheduled.

43. On this issue, the Court agrees with the Respondent that reasonable access does not entail the employer actively assisting the trade union recruit members. To insist that the Respondent ensure the attendance of all employees at the proposed meeting is an overreach on the part of the Claimant that goes beyond the scope of the employer's obligation as contemplated by Section 56 of the *Labour Relations Act*.
44. As I see it, reasonable access strikes a balance between the union's right to organize and communicate with employees on the one hand, and the employer's prerogative to manage its operations without undue interference on the other.
45. In view of the foregoing analysis, the Court is satisfied that the Motion is partly merited. The Respondent is obligated to accord the Claimant reasonable access within the confines of Section 56 of the *Labour Relations Act* and the settlement agreement, but such access cannot be conditioned upon payment nor can it require the Respondent to actively mobilize employees.
46. Accordingly, the Court makes the following orders:
 - a. The Respondent is hereby directed to grant the Claimant reasonable access to its premises for purposes of recruitment and other lawful union activities, provided that such access takes place outside official working hours or, if during working hours, does not disrupt the Respondent's operations.
 - b. There shall be no order as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER 2025.

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STELLA RUTTO

JUDGE

In the presence of:

Mr. Munoru for the Claimant/Applicant

Ms. Okello instructed by Mr. Okeche for the Respondent

Millicent Court Assistant

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

