



Kenya Union of Commercial Food and Allied Workers v Pavan Auto Hardware Limited (Cause E022 of 2023) [2025] KEELRC 2726 (KLR) (3 October 2025) (Ruling)

Neutral citation: [2025] KEELRC 2726 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E022 OF 2023
MA ONYANGO, J
OCTOBER 3, 2025**

BETWEEN

KENYA UNION OF COMMERCIAL FOOD AND ALLIED WORKERS CLAIMANT

AND

PAVAN AUTO HARDWARE LIMITED RESPONDENT

RULING

1. This is a ruling on the application dated 27th January 2025 filed by the Respondent/Applicant. It seeks the following orders: -
 - i. Spent
 - ii. Pending the hearing and determination of this application inter partes, this honourable court be pleased to issue a stay of execution of the judgment delivered on 11th December 2024 in this cause.
 - iii. Pending the hearing and determination of this application inter partes, this honourable court be pleased to review its judgment delivered on 11th December 2024 and find that the Respondent does not have the simple majority to compel the applicant sign a recognition agreement.
 - iv. Pending the hearing and determination of this application inter partes, the honourable court be pleased to send a labour officer to the Respondent's premises to ascertain the wishes of the employees
 - v. This honourable court be pleased to issue a stay of execution against the judgment delivered on 11th December 2024 in this cause



- vi. The honorable court be pleased to send a labor officer to the Respondent's premises to ascertain the wishes of the employees.
 - vii. The honourable court be pleased to review its judgment delivered on 11th December 2024 and find that the Respondent does not have the simple majority to compel the Applicant sign a recognition agreement and/or clarify the same due to current change in circumstances.
 - viii. Costs of this application be provided for
2. The application is supported by the grounds stated on the face of the application and the annexed affidavit of Pavan Sandip. Essentially the grounds relied upon by the applicant are inter alia that: -
- a. This honorable court on 11th December, 2024 delivered its judgment as regards the suit and directed that the respondent does sign a recognition agreement and deduct money from their employees and deposit to the union.
 - b. The applicant's advocate was informed the last time the matter was in court that judgment was to be delivered on 27th February, 2025 and were never notified of any changes in dates of delivery.
 - c. During the pendency of the suit and in particular between 5th December, 2024 and 5th January, 2025 most of the respondents' employees wrote that they do not wish to be represented by the Claimant Union and the Respondent was to furnish the documents on 13th January, 2025 when their advocate was to resume work only for them to be served with a judgment on 3rd January, 2025 indicating that the case was decided on 11th December, 2024.
 - d. While on Christmas vacation, the respondent's advocate visited the applicant's advocate office on or about 3rd January, 2025 and served a copy of a judgment delivered on 11th December, 2024 and recognition agreement.
 - e. Unbeknown to the court, since filing of this suit, around 6 employees who were the Respondents members left employment and 11 have stated that they do not wish to join the union since it involves deduction and remittance of their hard-earned money.
 - f. From the facts above, it is clear that the desire for the employees not to be represented by the claimant union was only made known to the applicant when he notified them of the contents of the judgment as such this information could not be delved to the court earlier.
 - g. It is only on or about 23rd January, 2025 when the employees were notified of the judgment that they decided to fish out their letters earlier written to show their position.
 - h. Had the respondent known their desire from the onset, they would have requested the court to invite a labour officer to prepare a report on the actual state on the ground since this would have greatly impacted the judgment delivered by the Honorable court.
 - i. From the facts above and the affidavit evidence presented below, it is clear that the claimant/respondent does not meet the threshold enshrined in the *labour relations act* and as such the applicant should not be compelled to sign any recognition agreement or deduct any funds from their remaining employees.
 - j. The applicant is also between a rock and a hard place hence the need for this honorable court's intervention in compliance of the judgment.



- k. The court can send a labour officer to the respondent/ applicant premises to interview the said employees in order for it to make an informed decision on the actual wishes of the employees.
3. The application is opposed. The Claimant filed a Replying Affidavit sworn on 18th February 2025 by its Branch Secretary, Rogers Momanyi Ombati. He deposes that the judgment delivered on 11th December 2024 was based solely on the pleadings and evidence properly filed before Court, and not on extraneous material.
4. According to the Claimant, the issues raised by the Applicant are an afterthought, that the letters referred to by the Respondent were obtained through the unfair labour practice that was meted on its employees following receipt of the judgment of this court in a bid to defeat the same.
5. In response to the Applicant's allegation that the Recognition Agreement cannot be signed on the basis that the Claimant no longer meets the threshold following terminations and resignations, the Claimant contends that no list of such terminations has been produced before this Court in support of that claim.
6. It is the Claimant's case that these issues only emerged after the close of pleadings and that the Applicant's conduct amounts to an attempt to sabotage the court process.
7. The Claimant contends that the Applicant has not satisfied the mandatory requirements stipulated under Rule 74(1) of the Employment and Labour Relations Court (Procedure) Rules, 2024.
8. In the end, the court was urged to dismiss the Applicant's application with costs.
9. The application was canvassed by way of written submissions. I have perused the record and found that both parties filed their submissions. The Applicant's submissions are dated 20th March 2025 while the Claimant's submissions are dated 18th March 2025.

Analysis and Determination

10. I have carefully considered the Notice of Motion, the supporting affidavit, the Replying Affidavit, and the rival submissions filed by the parties. The issues that arise for this court's determination are: -
 - i. Whether the Applicant has met the legal threshold for review of this Court's judgment delivered on 11th December 2024
 - ii. What orders should issue?

Whether the Applicant has satisfied the requirements for grant of stay of execution

11. The application herein is expressed to be made under sections 3, 3A and 80 of the *Civil Procedure Act*, Order 45, 51 rule 3 of the Civil Procedure Rules and rule 33 of the Employment and Labour Relations Court Procedure Rules. It is therefore essentially an application for review of this court's judgment. Reference to rule 33 of the Employment and Labour Relations Court (Procedure) Rules must be to the repealed rules as in the 2024 rules review is provided for in rule 74.

Whether the Applicant has met the legal threshold for review of this Court's judgment delivered on 11th December 2024

12. Rule 74(1) of the Employment and Labour Relations Court (Procedure) Rules 2024 provides for grounds of review as follows:
 - 74.



- (1) A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling—
 - (a) if there is discovery of a new and important matter or evidence which, despite the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made;
 - (b) on account of some mistake or error apparent on the face of the record;
 - (c) if the judgment or ruling requires clarification; or
 - (d) for any other sufficient reason.
13. Where the application for review is on grounds of new evidence, the applicant must demonstrate that the new evidence was not available at the time of the trial or could not with all due diligence have been obtained by the party seeking review orders.
14. The Applicant's basis for review is that some of its employees prepared letters of protest indicating that they did not wish to be represented by the Claimant union. However, the said letters were never produced before the Court prior to delivery of judgment.
15. It is well-established that where documents existed prior to judgment, a party seeking review must demonstrate why, despite exercising due diligence, they were not presented to the Court at that time. In the present case, the Applicant has failed to provide a credible explanation for the non-production of the letters, and, in fact, no such letters have been filed with the application.
16. In the absence of such justification, the Court cannot allow review on the basis of material that was available but was not presented prior to judgment.
17. Based on the foregoing, the Applicant has not demonstrated the discovery of new evidence within the meaning of Rule 74(1) of the Employment and Labour Relations Court (Procedure) Rules, 2024. What is before the Court are mere assertions regarding resignations and withdrawals, unsupported by any documentary proof. The Court is, accordingly, not persuaded that sufficient cause has been shown to justify a review.
18. Having found that the Applicant has not met the threshold for stay of execution and review, the Notice of Motion dated 27th January 2025 is hereby dismissed with costs to the Claimant.
19. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY ON* THIS 3RD DAY OF OCTOBER, 2025

MAUREEN ONYANGO

JUDGE

