



Banking Insurance and Finance Union v Insurance Regulatory Authority (Cause E161 of 2022) [2025] KEELRC 2982 (KLR) (22 October 2025) (Judgment)

Neutral citation: [2025] KEELRC 2982 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E161 OF 2022
DKN MARETE, J
OCTOBER 22, 2025**

**BETWEEN
BANKING INSURANCE AND FINANCE UNION CLAIMANT
AND
INSURANCE REGULATORY AUTHORITY RESPONDENT**

JUDGMENT

1. This matter was originated by of a Statement of Claim dated 15th March, 2022. The issue in dispute therein cited as;

Refusal to grant access to the union to recruit unionisable employees.
2. The Respondent in a Respondent’s Statements of Defence denies the claim and prays that the same be dismissed with costs.
3. The claimant’s case is that they are a registered trade union with a mandate to represent unionisable employees in banks, insurance companies, sacco and other financial institutions, whereas the Respondent is an insurance company doing business in the Republic of Kenya.
4. The claimant’s further case is that on 14th March, 2014, they served the Respondent with a letter of even date requesting the Respondent to grant access to union officials to undertake a recruitment exercise on his employees. This was responded to by a letter dated 1st July 2014 by the Respondent informing the claimant that it was undertaking a re-organization of the authority with a promise to looking to the request for access to recruit. This was again followed up by the claimant’s letter of 31st October, 2017 which was also ignored prompting the claimant to report a dispute to the Ministry of Labour for conciliation. Conciliation was undertaken but the parties ultimately failed to agree and the conciliator issued a certificate of unresolved dispute on 22nd June, 2018.



5. The claimant avers that the failure by the Respondent to grant access to the union to undertake a recruitment exercise is violation of the employees' rights to freedom of association enshrined under Articles 36 and 41 of the Constitution besides sections 4 and 5 of the Labour Relations Act. This is besides Convention 98 of the International Labour Organization. In the absence of another union representing the employees, the claimant cannot be denied an opportunity to meet these employees. This conduct by the Respondent is anti-union. This bears in mind that these employees are all willing to join the union by fear reprisals and victimization or even termination of employment in the event of interacting with union officials without permission by the employer.
6. The Claimant prays as follows;
- i. The Respondent be directed to allow the applicant/claimant access to potential members in its premises for purposes of recruitment and other lawful union activities outside working hours.
 - ii. The recruitment shall be undertaken during tea break, lunch break, before start of business and/or close of business and shall not in any event be timed to distract the normal performance of duties by potential members.
 - iii. The Respondent and/or her agents be restrained and/or prohibited from victimizing, coercing and/or threatening and terminating the services of employees who joins and takes part in union activities as allowed under order (i) and (ii) above.
 - iv. The Respondent to provide a list of all unionisable employees to the Claimant.
 - v. Costs of the suit.
7. The Respondent in defence denies that it is an insurance company as alleged at paragraph 2 of the Claim and avers that it is a public entity established under Section 3 of the Insurance Act to inter alia supervise, regulate and administer and control the insurance sector. It therefore denies that the claimant is legally mandated to unionize the employees who are indeed public sector employees. Again, there is no law conferring a monopoly on the claimant to unionize employees in the insurance sector and in any event, if this monopoly exists, it would infringe the right of insurance sector employees' contract to Articles 36 and 41 of Constitution as read with Sections 4 and 5 of the Labour Relation Act, 2007.
8. The Respondent further denies that it declined or continues to decline to grant the claimant access to their employees for recruitment and reiterate that these allegations are imaginary, malicious and in bad faith. It accuses the claimant of;
- i. Knowingly misleading the Honourable Court that the Respondent is an insurance company whose employees are unionisable by the Claimant;
 - ii. Knowingly misleading the Honourable Court that the law has conferred upon the Claimant the status of 'sole trade union for employees in the insurance sector,
 - iii. Falsely and maliciously misleading the Honourable Court that the Respondent's employees have been denied an opportunity to meet with union officials,
 - iv. Falsely and maliciously misleading the Honourable Court that the Claimant exercised reasonable diligence in seeking to access the Respondent's employees prior to filing the Statement of Claim;
 - v. Falsely and maliciously misleading the Honourable Court, at Paragraphs 13 and 14 of the Statement of Claim, that the Respondent is 'anti-union' and that the Respondent's employees



- fear victimization and termination of Claimant's employment' if seen interacting with the claimant's agents/staff/representatives;
- vi. Falsely and maliciously implying to the Honourable Court that its governing body had authorized recruitment of the Respondent's employees as alleged by the Claimant;
 - vii. Falsely and maliciously misleading the Honourable Court that the Claimant's constitution recognizes the Respondent's employees as unionisable, despite the fact that the Respondent is a public entity established under the *Insurance Act*; and
 - viii. Maliciously filing these proceedings without first referring the matter to arbitration as had been recommended in the Conciliator's letter dated 22nd June 2018.
9. In regard to an invitation to conciliator, the Respondent avers that their staff a republic officers who are not unionisable by the claimant and in any event the claimant has not in any way disclosed to the Authority its operational structure, constitutive documents or explained the fact that Respondent employees' interest would be represent by the claimant. This comes out thus;
- i. the effecting and carrying out by a person not carrying on a banking business, of contracts for fidelity bonds, performance bonds, administration bonds, bail bonds or customs bonds or similar contracts of guarantee.
 - ii. being contracts effected by way of business (and not merely incidental to some other business carried out by the person affecting them) in return for the payment of one or more premiums.
 - iii. the effecting and carrying out, by a body (not being a body carrying on a banking business) that carries on business which is insurance business apart from this paragraph, of capital redemption contracts.
 - iv. the effecting and carrying out of contracts to pay annuities on human life.
 - v. takaful insurance business based on group participation guaranteeing each of the members against defined loss or damage; (e) micro-insurance business; 4 *Insurance Act* (Cap. 487) Kenya.
 - vi. social insurance schemes; and
 - vii. any business incidental to insurance business as so defined but does not include;
 - a. business in relation to the benefits provided by a friendly society or trade union for its members or their dependants.
 - b. business in relation to the benefits provided for its members or their dependants by an association of employees.
10. Therefore, the entire pleadings by the claimant do not raise any triable issues and are sca + ndalous, frivolous, vexatious and an abuse of the court process and should be dismissed with costs.
11. The issues for determination therefore are;
1. Whether the claimant has any lawful claim against the Respondent.
 2. Whether the claimant is entitled to the relief sought.
 3. Who bears the costs of this cause.
12. The 1st issue for determination is whether the claimant has any lawful claim against the Respondent.



13. The claimant in their written submissions dated 15th February, 2025 reiterates their claim and seeks to rely on authority of Kenya Private universities Workers Union vs. Management University of Kenya at paragraph 24 and 25 where the court emphasized the need for continuous recruitment of members even by unions that do not have a recognition agreement with the union concerned. These should be allowed access to recruit members in line with Section 4(1) of *Labour Relations Act*, 2007, the Industrial Relation Charter and Articles 36 and 41 of *the Constitution* of Kenya, 2010.
14. The Respondent in rejoinder written submissions dated 11th March, 2025 reiterates their preliminary objection raised at paragraph 9 of the defence which objection diminishes the efficacy of this claim and proceedings in toto. This comes out as follows;
 - i. No resolution of the Claimant's governing body has been annexed to the Statement of Claim to evidence the requisite authority to institute these proceedings,
 - ii. The Statement of Claim is not supported by the report/findings of the Conciliator on the Conciliation process, contrary to Rule 5(1)(b)(i) of the Employment and Labour Relations Court (Procedure) Rules, 2016; and
 - iii. The Statement of Claim is not supported by the minutes of any conciliation meeting, contrary to Rule 5(1)(b)(i) of the Employment and Labour Relations Court (Procedure) Rules, 2016.
15. This being the case, the claimant has no lawful cause against the Respondent. The Respondent misses out as an insurance company or being in the business of an insurance company. It is a statutory authority vested in the with the authority and mandate of regulating an supervising insurance companies and business. The claimant therefore lacked jurisdiction to recruit employees in this sector. This answers the 1st issue for determination.
16. On a finding of no relationship inter partes, the other issues for determination fall by the way side. They are not worthy of any determination.
17. I am therefore inclined to dismiss the claim with order that each party bears their costs of the same.

DELIVERED, DATED AND SIGNED THIS 22ND DAY OF OCTOBER 2025.

D. K. NJAGI MARETE

JUDGE

Appearances;

Mr. Munoru for the Claimant Union.

Miss Kirima instructed by Federation of Kenya Employer for the Respondent.

