



**Kenya Engineering Workers Union v Thorlite Kenya Limited (Cause E338 of 2023) [2025] KEELRC 3035 (KLR) (31 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3035 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E338 OF 2023  
SC RUTTO, J  
OCTOBER 31, 2025**

**BETWEEN**  
**KENYA ENGINEERING WORKERS UNION ..... CLAIMANT**  
**AND**  
**THORLITE KENYA LIMITED ..... RESPONDENT**

**RULING**

1. Through a judgment rendered on 6<sup>th</sup> December 2024, this Court entered judgment in favour of the Claimant in the following terms:
  - a. The Respondent be and is hereby ordered to enter into a recognition agreement with the Claimant Union within 30 days from the date of this judgment.
  - b. The Respondent to continue effecting union dues deductions from the Claimant’s registered members and remitting the same to the Claimant’s gazetted bank account, as per the Ruling delivered by this Court on 27<sup>th</sup> September 2023.
  - c. In view of the nature of this Claim, each party will bear their own costs.
2. Following the delivery of the Judgment, the Applicant lodged the present Application dated 12<sup>th</sup> March 2025 seeking the following orders: -
  - a. That this Honorable Court be pleased to review and set aside part of its judgment delivered on 6<sup>th</sup> December 2024 in Employment Cause No. E338 of 2023 which gave the union fifty plus one majority of unionisable employees.
  - b. That this Honorable Court be pleased to find that there is new and material evidence which was not available at the time of judgment, which does not grant the claimant fifty plus one majority to enable it have a recognition agreement with the Applicant/Respondent



- c. That this Honorable court be pleased to revoke the recognition agreement between the applicant Thorlight Limited and the respondent Kenya Engineering Workers Union.
  - d. That this Honorable Court be pleased to grant such further or other relief as it may deem just and expedient in the circumstances.
  - e. That the costs of this application be provided for.
3. The Application is supported by the grounds set out on its face and the Affidavit sworn by Atul Patel, the Applicant's Managing Director. Mr. Patel avers that in its judgment dated 6<sup>th</sup> December 2024, this Court directed the Applicant to execute a recognition agreement with the Claimant Union on the assumption that the Applicant's employees were still members of the said Union.
  4. Mr. Patel avers that the Applicant duly complied with the Court's directive by signing the recognition agreement. He contends that the agreement is no longer tenable as the employees had, during the pendency of the proceedings, resigned from the Union, a fact that only came to the Applicant's attention after the judgment had been delivered.
  5. He further adds that at the time of the employees' resignation, the Applicant's director was unwell and frequently in and out of hospital, which hindered the timely communication of this crucial information to the Applicant's advocates.
  6. Mr. Patel adds that the Claimant had presented a check-off list of 17 employees allegedly affiliated with the Union and relied on the same to seek recognition. However, by the time of judgment, eight of those employees had already left employment, thereby reducing the number of unionisable employees represented by the Union.
  7. He maintains that, consequently, only nine employees remained on the check-off list, a fact well known to the Union at the material time.
  8. Mr. Patel further states that out of the remaining nine employees, five were employees of Thor Lighting World, leaving only four unionisable employees belonging to the Applicant and thus represented by the Union.
  9. He asserts that new evidence has since emerged confirming that all employees had ceased to be members of the Union prior to delivery of the judgment.
  10. Mr. Patel further deposes that the current employees have formally written to the Applicant expressing that they do not consent to any deductions for union dues or to being represented in any collective bargaining process.
  11. He avers that this situation places the Applicant in a difficult position, as enforcing deductions or engaging in collective bargaining negotiations without employees' consent would contravene their rights.
  12. Mr. Patel contends that despite being aware of these prevailing circumstances, the Claimant Union continues to press for collective bargaining negotiations without the consent of the affected employees.
  13. He further states that, in its current form, the judgment directing execution of a recognition agreement and payment of union dues cannot be implemented lawfully without employee consent. He maintains that collective bargaining negotiations are now unnecessary, given that no employees remain as members of the Union.



14. According to Mr. Patel, the newly discovered evidence fundamentally alters the foundation of the judgment and would likely have led to a different outcome had it been presented earlier.
15. The Claimant opposed the Application through a Response dated 21<sup>st</sup> May 2025, supported by an Affidavit sworn on even date by its General Secretary, Wycliffe Amakombo Nyamwata. Mr. Nyamwata avers that the Applicant's motion is, in substance, an appeal disguised as an Application for Review.
16. He asserts that the Applicant has not presented any new or material evidence capable of justifying a review of this Honourable Court's Judgment.
17. Mr. Nyamwata contends that the documents annexed to the Applicant's Application do not constitute new evidence and should not be treated as such.
18. He further deposes that the Applicant's Managing Director, who now claims to have discovered new and important evidence, was the same person who swore the Affidavit in response to the Claimant's Claim, filed submissions, and testified during the hearing. Therefore, the alleged illness is merely being invoked to mislead the Court and delay the conclusion of the matter.
19. In his view, the grounds relied upon by the Applicant do not meet the legal threshold for discovery of new and important evidence which, with the exercise of due diligence, could not have been within the Applicant's knowledge at the time of trial.
20. Mr. Nyamwata further asserts that the question of whether the Union had met the threshold for recognition was fully determined based on the evidence and arguments presented by both parties during the hearing, taking into account the circumstances existing at the time recognition was first sought, not at the time the judgment was delivered or executed. Consequently, the purported new evidence does not alter the factual position as it stood when the Union sought recognition.
21. He adds that when a Union engages in collective bargaining, it does so on behalf of all unionisable employees, not solely for registered members who pay union dues, as agency fees are payable on behalf of non-members as well.
22. Mr. Nyamwata is of the view that the Applicant is engaging in acts of victimization and intimidation, including the deliberate refusal to renew contracts of union members, in order to coerce employees into withdrawing from the Claimant Union and disavowing its representation.
23. He maintains that the assertions by the Applicant can only be properly addressed once the proper procedure for revocation of the recognition agreement has been activated.
24. According to Mr. Nyamwata, the Applicant has consistently sought to frustrate the collective bargaining process and only filed the present Application after the Claimant Union initiated steps to commence collective bargaining negotiations, process he contends the Applicant refused to participate in, prompting the Union to declare a dispute before the Ministry of Labour.
25. In a rejoinder to the Claimant's Replying Affidavit, the Applicant filed a Supplementary Affidavit sworn by Mr. Patel on 21<sup>st</sup> June 2025. Mr. Patel avers that some of the resignation letters were issued during and after the delivery of the judgment. In his view, these letters constitute new evidence that was not within the Applicant's knowledge at the time of judgment and therefore provide sufficient grounds for seeking a review, as they were not available to the Court during the original proceedings.
26. Mr. Patel further deposed that the resignation letters were in the possession of the respective employees and were only made available to him after the employees were informed that deductions would be made pursuant to the judgment.



27. According to Mr. Patel, the Claimant union no longer has any employees at the shop-floor level capable of representing workers in negotiations.
28. Mr. Patel maintained that it would be impractical to implement or enforce the recognition agreement in view of the Claimant Union lacking membership.

### **Submissions**

29. Both parties filed written submissions which the Court has considered.

### **Analysis and Determination**

30. The Court has considered the Application, the Claimant's Affidavit, together with the rival submissions, and identifies the central issue for determination as whether the Applicant has met the legal threshold for the grant of an order of review.
31. Rule 74(1) of the Employment and Labour Relations Court (Procedure) Rules, 2024 expressly stipulates that the Court may review its judgment or ruling only where any of the following grounds are established: —
  - 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.
32. The basis of the instant Application is that the Applicant has discovered new and material evidence indicating that its employees had long ceased being members of the Claimant Union. The Applicant avers that its employees have since written to the company, expressly stating that they do not consent to any deductions in favour of the Union or to participation in any collective bargaining arrangements.
33. To explain the delay in presenting this alleged new evidence, the Applicant contends that its director was unwell and frequently in and out of hospital, thereby preventing him from availing the crucial information to the Applicant's advocates in good time.
34. The purported new evidence comprises resignation letters by the Applicant's employees from the Claimant Union, letters of summary dismissal with respect to three employees, letters of "mutual separation" with four employees, and a unified payroll return.
35. It is noteworthy that six of the resignation letters are undated, while others bear dates such as 29<sup>th</sup> June 2023, 1<sup>st</sup> August 2023, 23<sup>rd</sup> May 2023, and 2<sup>nd</sup> August 2023.
36. Additionally, it is evident that employees who exited the Applicant's employment were summarily dismissed on 28<sup>th</sup> April 2023, while those who left through mutual separation did so on 5<sup>th</sup> May 2023 and 26<sup>th</sup> June 2023.
37. The Court record further bears that the matter proceeded to hearing on 29<sup>th</sup> April 2024 and 25<sup>th</sup> July 2024, during which Mr. Atul Patel testified on behalf of the Applicant.



38. It is therefore evident that by the time the employees resigned from the Union or their respective employments terminated, the main suit was still pending before the Court, and indeed, the hearing had not yet commenced.
39. What's more, Mr. Patel, the same person who testified on behalf of the Applicant at trial is also the deponent of the Affidavit supporting the present Application. Given his position as Managing Director in the Applicant company, Mr. Patel was reasonably expected to be aware of any developments concerning the Applicant's employees. It follows that the evidence now presented could, with due diligence, have been introduced during the trial.
40. In light of the foregoing, the Court is not persuaded that the evidence relied upon in support of this Application was unknown to, or unavailable to the Applicant during the hearing on 29<sup>th</sup> April 2024 and 25<sup>th</sup> July 2024. With reasonable diligence, the Applicant could have produced the same at trial but failed to do so.
41. In the decision of *Francis Origo & Another v Jacob Kumali Mungala* [2000] KEHC 65 (KLR), the Court dismissed an application for review where the applicants failed to demonstrate discovery of new and important evidence, holding that the witness they sought to rely on had been known to them all along.
42. Similarly, this Court finds that the Applicant has not met the threshold set under Rule 74(1) of the Court's Rules, namely, that a review may only be granted upon discovery of new and important matter or evidence which, despite due diligence, was not within the Applicant's knowledge or could not be produced at the time the judgment was delivered.
43. The Court further echoes the decision in *Francis Njoroge v Stephen Maina Kamore* [2018] eKLR, where the Court held:

“Indeed, if parties were allowed to seek review of decisions on grounds that they are not in a position to carry out the orders sought to be reviewed, or rather that the orders are not convenient to them, then a dangerous precedent would be set in which court decisions that ought to be examined on appeal would be exposed to attacks in the courts in which they were made under the guise of review...This is a court of justice but not a court of convenience...”
44. The Applicant has further invited the Court to revoke the recognition agreement entered into with the Claimant Union. With respect to this prayer, it is worth pointing that Section 54(5) of the *Labour Relations Act* expressly provides that an employer, group of employers, or employers' association seeking to terminate or revoke a recognition agreement must apply to the National Labour Board.
45. It therefore follows that where the membership of a trade union falls below the statutory threshold, the proper procedure for terminating a recognition agreement is by application to the National Labour Board, not through an application before this Court as the Applicant has done. Consequently, the prayers sought by the Applicant in that regard are incapable of being granted.
46. In the end, the Court finds that the Application dated 12<sup>th</sup> March 2025 lacks merit, the Applicant having failed to establish any valid ground for review of the judgment.
47. Accordingly, the Application is dismissed with costs to the Claimant.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31<sup>ST</sup> DAY OF OCTOBER, 2025.**

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**STELLA RUTTO**



## **JUDGE**

In the presence of:

Mr. Namasake for the Claimant/Respondent

Mr. Achando for the Respondent/Applicant

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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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**

