



Kenya Union of Commercial Food & Allied Workers v Tb Distributors Ltd; Ongwae (Grievant) (Cause E007 of 2025) [2025] KEELRC 3146 (KLR) (11 November 2025) (Ruling)

Neutral citation: [2025] KEELRC 3146 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISII
CAUSE E007 OF 2025
NZIOKI WA MAKAU, J
NOVEMBER 11, 2025**

BETWEEN

KENYA UNION OF COMMERCIAL FOOD & ALLIED WORKERS CLAIMANT

AND

TB DISTRIBUTORS LTD RESPONDENT

AND

WYCLIFF ONDIBA ONGWAE GRIEVANT

RULING

1. The Respondent raised a Preliminary Objection dated 19th September 2025 challenging the competence of the Claim. It contended that the Claim as filed is incompetent, fatally defective, and bad in law. The Respondent's position is that the Claimant lacks the requisite locus standi as the Grievant is not a member of the Claimant union. It further averred that it has no recognition agreement with the Claimant and does not remit any union dues to it. Consequently, it was urged that the Claim offends the provisions of sections 48, 54, 55, and 57 of the *kenya labour relations act 2007 14 Labour Relations Act*, as well as Rule 13(2) of the Employment and Labour Relations Court (Procedure) Rules, 2016, read together with sections 22 and 54 to 57 of the *kenya labour relations act 2007 14 Labour Relations Act*.
2. In response, the Claimant filed a Replying Affidavit sworn by its Kisii Branch Secretary, Mr. George Obongo. He deposed that under sections 54(1), 54(2), and 57 of the *kenya labour relations act 2007 14 Labour Relations Act*, there is no requirement for a recognition agreement before a trade union may represent a Grievant. He further averred that since the Respondent is an employer and not an employee, it cannot remit union dues or subscriptions, relying on Rule 5 of the Claimant's constitution and section 52 of the *kenya labour relations act 2007 14 Labour Relations Act*. He further deposed that the Employment and Labour Relations Court (Procedure) Rules, 2016, cited by the Respondent, had been revoked and replaced with the Employment and Labour Relations Court (Procedure) Rules, 2024. Regarding section 22



of the *akn ke act 2007 14 Labour Relations Act*, the Claimant contended that it was inapplicable to the present dispute as it deals with contracts in restraint of trade. Similarly, it was argued that section 55 of the Act was irrelevant as it relates to the election of trade union representatives. Mr. Obongo maintained that the Grievant was a duly registered and fully paid-up member of the Claimant union, holding membership number 1082, having joined the union on 1st January 2021.

3. Although directions were issued on 13th October 2025 requiring the parties to file written submissions, only the Respondent complied, and thus its submissions are the only ones on record.

Respondent's Submissions

4. The Respondent submitted that its Preliminary Objection meets the threshold established in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, as it raises a pure point of law which arises clearly from the pleadings and is capable of disposing of the suit without the necessity of a trial. It was the Respondent's submission that in the absence of recognition, the Claimant lacks legal capacity to litigate on behalf of the Respondent's employees. Reliance was placed on section 54(1) of the *akn ke act 2007 14 Labour Relations Act*, which requires that a trade union be recognized by an employer where it represents a simple majority of unionisable employees. It was further contended that the deduction and remittance of union dues constitute the primary evidence of recognition and valid union membership. In this regard, the Respondent cited sections 48(2) and (3) of the *akn ke act 2007 14 Labour Relations Act*, which impose an obligation upon the employer to deduct union dues from the wages of members and remit them to the union's registered office. On the question of membership, the Respondent submitted that no evidence had been tendered to demonstrate that the grievant was a member of the Claimant union. It therefore urged that, in the absence of such proof, the Claim was void ab initio. The Respondent referred to section 55(1) of the *akn ke act 2007 14 Labour Relations Act*, which provides that a trade union may only act on behalf of its members. It maintained that without a recognition agreement, proof of membership, or remittance of dues, the Claimant lacked the necessary standing to institute proceedings relating to individual employment contracts. To buttress this position, the Respondent relied on the cases of *Kenya Plantation & Agricultural Workers Union v Finlays Horticulture Kenya Ltd* [2019] eKLR; *Kenya Union of Commercial & Allied Workers v Meru North Farmers Sacco Ltd* [2014] eKLR; and *Kenya Union of Sugar Plantation Workers v Mumias Sugar Co. Ltd* [2016] eKLR, where the courts held that a trade union must demonstrate recognition and deduction of union dues to establish locus standi. Further reliance was placed on the decision in the case of *Kenya Game Hunting and Safari Workers Union v Safari Club Limited* [2013] eKLR, where the court struck out a claim after finding that the grievants had not proven union membership, and *Kenya Union of Commercial Food & Allied Workers v Water Resources Management Authority* [2015] eKLR, where it was held that a trade union may only litigate on matters arising from a collective bargaining agreement or where expressly authorized by statute. In conclusion, the Respondent submitted that the Claimant's lack of locus standi rendered the proceedings an abuse of the court process. Citing the decision in *Muchanga Investments Ltd v Safaris Unlimited (Africa) Ltd & 2 others* [2009] eKLR, it urged the court to uphold the Preliminary Objection, strike out the Statement of Claim, and award costs to the Respondent, together with such other orders as the court may deem fit in the circumstances.

Disposition

5. The objection raised goes to the issue of jurisdiction of the Court. The determination of the preliminary objection herein will have a profound effect on the suit as it goes to the root. In the case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (supra), it was held that a preliminary objection ought to be raised where a pure point of law capable of disposing the suit



without a trial arises. An example of that as indicated in the suit was the question of jurisdiction. The Respondent herein asserts the preliminary objection it has raised meets the threshold in the above cited case as the objection made raises a pure point of law which arises clearly from the pleadings and is capable of disposing of the suit without the necessity of a trial.

6. The Respondent avers the Claimant union is non-suited as the Grievant is not a member of the Trade Union. The other attack is that the Respondent and the Claimant do not have a recognition agreement. Under section 54 of the *Kenya Labour Relations Act 2007*, there is provision for the recognition of a trade union by an employer. Subsequent to recognition, an employer and the trade union concerned can negotiate terms for collective bargaining. The trade union in this case does not have a recognition agreement with the employer. There is also no evidence adduced that the Grievant was a member of the trade union. Where a member of a trade union seeks to articulate their grievance through the Union, there should be demonstration of membership. A trade union does not operate as a law firm does. In the mind of the Court, there was no basis for the proceedings before this Court as the Union lacks locus standi to institute the proceedings before this Court. The only option available to the Court in light of this is to permit the preliminary objection and strike out the claim. As the employer had participated in conciliation and did not raise the issue of locus standi before the conciliator, there will be no order as to costs meaning that each party will bear their own costs.

Orders accordingly.

DATED AND DELIVERED AT KISUMU THIS 11TH DAY OF NOVEMBER 2025

NZIOKI WA MAKAU, MCIARB.

JUDGE

