



**Communication Workers Union of Kenya v Wananchi Group (Kenya) Limited & 3 others (Cause E024 of 2022) [2025] KEELRC 3287 (KLR) (20 November 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3287 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E024 OF 2022  
MN NDUMA, J  
NOVEMBER 20, 2025**

**BETWEEN**

**COMMUNICATION WORKERS UNION OF KENYA ..... CLAIMANT**

**AND**

**WANANCHI GROUP (KENYA) LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**ISAT AFRICA KENYA LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**SIMBANET COMMUNICATION LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**WANANCHI TELECOM LIMITED ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. In an amended notice of motion application dated 27<sup>th</sup> May 2025 the Respondents/Applicants seeks an order in the following terms: -
  1. Spent
  2. Spent
  3. Spent
  4. That this court be pleased to review the judgment of the court dated 8<sup>th</sup> May 2025
  5. Costs of the application be provided.
2. The application is premised on grounds 1 to 8 set out on the face of the amended notice of motion and buttressed in the supporting affidavit of Caroline Julio, the Legal and Regulatory Director of the 1<sup>st</sup> Respondent.
3. The gravamen of the application for review is that there exists discovery of a new and important matter which directly affects the judgment of the court as rendered: -



- a. The unionisable employees of the 1<sup>st</sup> Respondents establishment who are members of the Claimant as at the date of judgment of the court are only 11 employees.
  - b. In the circumstances, the Claimant has failed to meet the threshold of recognition as outlined in law and it would be impossible to execute a Recognition Agreement.
4. That the application has been made without unreasonable delay.
  5. In the supporting affidavit the deponent stated as follows: -  
at paragraph 8 of the judgment the court noted and ruled as follows: -  
“the Claimant has recruited as at the time 109 unionisable employees of Wananchi Group (K) Ltd out of the 219 staff not in the supervisory category which constitute a simple majority of all the unionisable employees in the employment of the 1<sup>st</sup> Respondent.
  6. That it is clear that the staff recruited comprised only 49.77 percent of the unionisable employees and hence falls short of the simple majority as required under the provisions of the Labour Relations Act. That there is an error on the face of the record when the court decreed that the Claimant had attained the simple majority with a direction that the company be compelled to sign a Recognition Agreement within 14 days from the date of delivery of the judgment.
  7. That the Claimant has been receiving remittances for only 11 employees and all others who were initially in the list before court during the hearing have since voluntarily resigned from the Claimant union in exercise of their freedom of association.
  8. That the Advocate for the 1<sup>st</sup> Respondent have since reached out to the Advocate for the Claimant with a view to have the mathematical error corrected.

### **Response**

9. The Claimant/Respondent filed a replying affidavit sworn to by Benson O. Okwaro on 26<sup>th</sup> June 2025 who deposes that there is no apparent error on the face of the judgment of the court and that the 1<sup>st</sup> Respondent is seeking to have the court rewrite its own judgment.
10. That the order for stay sought does not satisfy the requirements of order 42 Rule 6(2) of the Civil Procedure Rules 2010 since it has not been demonstrated that the Applicant would suffer substantial loss if the order is not granted and that security for due performance of the order has been provided by the Applicant.

### **Determination**

11. The parties filed written submissions which the court has considered together with the deposition by the parties and the issue for determination is whether the Applicant has satisfied the requirements of Rule 74 of the Employment and Labour Relations Court (Procedure) Rules, 2024 which provides:-

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- (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;”

12. The determination by the court at paragraph 8 of its judgment is a determination of fact based on the pleadings and submissions filed by the Claimant. It is not an error on the face of the judgment. This being the case, the same may only be challenged by way of appeal to the Court of Appeal. This court cannot re-write its own judgment as it is functus officio in this respect.
13. The matter of members of the Claimant union having voluntarily left the union after the judgment does not qualify to be a new fact in terms of Rule 74(1)(a). The decision of the court is based on facts as existed when the cause of action arose and not after.
14. Indeed, resignation of members of a union after the judgment of the court is not necessarily a fact in favour of the Applicant and may necessitate consideration of factors beyond the purview of the judgment of the court as at the time it was rendered.
15. The court has stated time and again that recognition is based on data as at the time of filing suit not later. See the Court of Appeal in the case of Civicon Limited & Amalgamated Union of Kenya Metal Workers (2013) eklr where it was held that;

We cannot help, looking at these averments, but find mischief on the part of the appellant, by a deliberate effort to diminish the numbers of eligible employees in order to frustrate the recognition process. How else can one explain the numerous identical letters purportedly written on more or less the same dates by eligible staff members withdrawing membership? Those purported withdrawals were of no consequence in light of the court’s factual finding, on evidence presented at the time that section 54(1) aforesaid had been satisfied by the respondent by demonstrating that 345 unionisable employees had joined the respondent. At that stage the appellant ought to have signed the recognition agreement as it dutifully continued to remit union dues of the recruited members to the respondent.”

16. This application is wholly misconceived, lacks merit and is dismissed with no order as to costs.

**DATED AT NAIROBI THIS 20<sup>TH</sup> DAY OF NOVEMBER 2025.**

**MATHEWS NDUMA**

**JUDGE**

Appearance:

Mr. Bundotich for Claimant/Respondent

Mr. Kamotho for 1<sup>st</sup> Respondent/Applicant

Mr. Kemboi – Court Assistant

