



Kenya Union of Journalists v German Radio and TV International; Kanyuira & 5 others (Interested Parties) (Employment and Labour Relations Cause E1081 of 2025) [2025] KEELRC 3750 (KLR) (17 December 2025) (Ruling)

Neutral citation: [2025] KEELRC 3750 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E1081 OF 2025
BOM MANANI, J
DECEMBER 17, 2025**

BETWEEN

KENYA UNION OF JOURNALISTS CLAIMANT

AND

GERMAN RADIO AND TV INTERNATIONAL RESPONDENT

AND

PATRICK GATUA KANYUIRA INTERESTED PARTY

LAWRENCE MWERESA INTERESTED PARTY

SUSAN GACHUHI INTERESTED PARTY

KAGUU KIMANI GITHAE INTERESTED PARTY

JOYMARY NJAMBI NJUNGE INTERESTED PARTY

JOHN WAIGANJO INTERESTED PARTY

RULING

1. The Claimant is a registered Trade Union operating within the Republic of Kenya. It represents unionisable employees in the media industry.
2. The Claimant instituted the instant suit through the Statement of Claim dated 6th November 2025. From the Statement of Claim, it is apparent that the dispute between the parties relates to recognition and deduction and remittance of trade union dues.
3. According to the Claimant, it attained more than 50% membership of the Respondent’s workforce after the Interested Parties took up membership with it. As such, it avers that it has attained the simple majority threshold required for recognition by the Respondent.



4. The Claimant avers that it forwarded to the Respondent a list of its members within the rank and file of the Respondent's employment through a letter to the Respondent dated 30th September 2025 in order for the Respondent to commence deduction and remittance of trade union dues. Further, the Claimant avers that it forwarded to the Respondent a draft Recognition Agreement for the latter's review and execution.
5. The Claimant contends that the law obligates the Respondent to accord it recognition. It further contends that the Respondent is obligated to deduct and remit to it trade union dues from its (the Claimant's) members. However, it (the Claimant) asserts that the Respondent has been obstinate in discharging these obligations. Hence the decision to file suit to enforce compliance.
6. The Claimant further contends that the Respondent has threatened to victimize its members if they engage in trade union activities. It asserts that these threats are meant to discourage the employees from joining it.
7. The Claimant contends that it has already written to the Ministry of Labour and Social Protection for resolution of the dispute as required by section 62 of the *Labour Relations Act*. Nevertheless, it avers that it has also approached the court under certificate of urgency pursuant to the provisions of sections 73 and 74 of the *Labour Relations Act*.
8. The Claimant thus prays for orders to prevent the Respondent from victimizing the Interested Parties because of their decision to join it. It also seeks an order of mandatory injunction to compel the Respondent to deduct and remit to it trade union dues.
9. The Claimant further prays for a declaration that the Respondent's refusal to accord it recognition is in violation of section 54 of the *Labour Relations Act*. As such, it prays that the Respondent be compelled to execute a Recognition Agreement with it within thirty days of the court's judgment.
10. Contemporaneous with the Statement of Claim, the Claimant filed the application dated 6th November 2025 through which it sought various orders including the following:-
 - a. That the application be certified as urgent.
 - b. That pending the hearing and determination of the application, the Respondent be barred from victimizing the Interested Parties on account of their trade union membership.
 - c. That pending the hearing and determination of the suit, the Respondent be barred from victimizing the Interested Parties on account of their trade union membership.
 - d. That pending the hearing and determination of the application and the suit, the Respondent be compelled to deduct trade union dues being 1% from the Interested Parties and to remit the same to the union account.
 - e. That a mandatory injunction to issue to compel the Respondent to conclude a Recognition Agreement with the Applicant.
 - f. That costs of the application be provided for.
11. Upon considering the motion on 10th and 17th November 2025, the court granted prayer two thereof with the consequence that pending the hearing and determination of the application, the Respondent was barred from victimizing the Interested Parties on account of their membership of the Claimant. The order was served on the Respondent.



12. On 4th December 2025, the Claimant's representative informed the court that the Respondent had breached the aforesaid order. It is this development which informed the filing of the application dated 9th December 2025.
13. In the application, the Claimant seeks for various orders including the following: an order to join Karin Bensch as a Respondent in the cause; an order to stay the Respondent's decision to terminate the contract of service for the 3rd Interested Party pending the hearing and determination of the application dated 6th November 2025 and the suit; leave to institute contempt proceedings against the Respondent and the intended Respondent for willful disobedience of a lawful court order; an order to hold the proposed Respondent in contempt of court for disobedience of a court order; an order for committal of the proposed Respondent to civil jail for contempt of court; and in the alternative an order imposing a fine or other appropriate penalty on the alleged contemnors.
14. The Respondent has opposed the application. It has filed affidavits by several of its officers, all dated 12th December 2025, to anchor its response.
15. Essentially, the Respondent's contention is as follows:-
 - a. That the application for contempt of court is bad in law since it is supported by an affidavit which is sworn by an individual who has no firsthand information on the contested matters.
 - b. That there has been no violation of the court order in question since it (the Respondent) only informed the 3rd Interested Party of its intention not to confirm her contract after her probation period lapses in January 2026.
 - c. That the purported dispute between the 3rd Interested Party and the Respondent arises from a contract which provides for arbitration as the preferred mechanism for resolving disputes therefrom. As such, the matter falls outside the court's jurisdiction.
 - d. That in any case, the Claimant has not met the threshold for grant of interim injunctive and or stay orders.
16. The court has considered the contrasting positions expressed by the parties on the application. As pointed out earlier, the dispute between the parties (based on the Statement of Claim before the court) relates to: the refusal by the Respondent to recognize the Claimant for purposes of collective bargaining; the refusal by the Respondent to deduct and remit to the Claimant trade union dues from the Interested Parties; and the fear of victimization of the Interested Parties by the Respondent owing to their trade union activities.
17. It is critical to note that the controversy between the parties as set out in the Statement of Claim is not about and does not relate to termination of the contract of service of the 3rd Interested Party. However, following the alleged breach of the order which the court issued on 17th November 2025, the dispute has morphed from what it initially was into a dispute regarding whether the Respondent's decision to notify the 3rd Interested Party of its intention not confirm her alleged probationary contract is legitimate.
18. According to the Claimant, the Respondent's decision is meant to victimize the 3rd Interested Party because of her association with it. As such, the Claimant contends that the Respondent and the proposed Respondent should be found to be in contempt of court.
19. On the other hand, the Respondent contends that the impugned decision was not intended to defy the court order of 17th November 2025. It avers that the 3rd Interested Party is engaged on a probationary



contract whose term expires in January 2026. It further contends that the letter of 25th November 2025 merely notified the said Interested Party that her contract will not be confirmed once the probationary period lapses.

20. The court is alive to the employer's prerogative to manage the workplace in the best way he deems fit without undue interference from third parties, including the court. As such, it (the court) will not interfere with the exercise of this prerogative unless it is demonstrated that the employer has acted in violation of the law or the contract between the parties or some internal rule. And when it (the court) intervenes, this will be with the intention of getting the employer to rectify the anomaly that has been identified in the exercise of the prerogative and not to stop the process altogether (*Irungu v Kenya Pipeline Company Limited (Cause E950 of 2022) [2023] KEELRC 459 (KLR) (23 February 2023) (Ruling)*).
21. The Claimant's request in the application dated 6th November 2025 was for an order to bar the Respondent from victimizing its members for their union membership. However, the proposed order was not intended to bar the Respondent from exercising the usual managerial prerogative at the workplace. As such, the court is reluctant to impeach any act which the Respondent undertakes as amounting to violation of the order of 17th November 2025 unless there is cogent evidence to demonstrate that the Respondent's action was intended to contravene the said order.
22. The Respondent contends that the notice dated 25th November 2025 to the 3rd Interested Party was not intended to victimize her. Rather, it was to inform her of the decision not to confirm her contract once the probationary term ends in January 2026. The Respondent contends that it issued the impugned notice in exercise of its mandate as the employer of the 3rd Interested Party.
23. The court notes that indeed, section 42 of the [Employment Act](#) entitles an employer, including the Respondent, to engage staff on probation and to release them from service if they do not pass the suitability test. As such, it is within an employer's managerial prerogative to determine whether or not to release a member of staff who has been on probation. The court will not interfere with the exercise of this mandate unless there is compelling evidence to suggest that the employer's action is irregular.
24. The Claimant contends that the letter dated 25th November 2025 by the Respondent to the 3rd Interested Party was intended to victimize her because of her trade union membership. However, there is nothing in the letter to imply that this is the reason why it was authored.
25. On the contrary, the letter only focuses on the alleged probationary contract between the parties. As such, the court is reluctant to infer that the Respondent wrote the notice in order to victimize the 3rd Interested Party.
26. It is noteworthy that the 3rd Interested Party did not swear an affidavit to specifically allege that the Respondent wrote the impugned letter in a bid to victimize her. The affidavit that seeks to speak to the matter is sworn by the Claimant's General Secretary.
27. The 3rd Interested Party, who is a party to the action, was the most suited person to speak to the matter. However, she has avoided to do so. This dissuades the court from believing the Claimant's contention that the letter was intended to victimize the said Interested Party.
28. The court is alive to the fact that the 3rd Interested Party has an affidavit purporting to be in support of the application. However, it (the court) is not persuaded that the affidavit was intended to support the motion for the following reasons. First and as the record shows, the affidavit was sworn on 1st December 2025, approximately eight (8) days before the application was prepared. Second, from paragraph 18 of



the affidavit, it is apparent that it was intended for use in the proceedings of 4th December 2025 long before the instant application was filed.

29. For the above reasons, the court declines to find the Respondent in contempt of the order of 17th November 2025. It is not obvious from the impugned notice of 25th November 2025 that it was intended to victimize the 3rd Interested Party as opposed to communicating the Respondent's decision not to confirm her alleged probationary contract. As such, the court will not stay it (the notice).
30. Finally, the court wishes to point out that whether the contract between the Respondent and the 3rd Interested Party is probationary or confirmed is not one of the disputes in the Statement of Claim on record. As such, it (the court) cannot purport to determine that question through the instant proceedings.
31. But even if the contrary was the case, the court is not entitled to make substantive findings on contested issues including whether the 3rd Interested Party's contract had been confirmed or was still probationary at this preliminary stage of the case. These are matters which should be determined after full trial of the case or through arbitration as the parties may elect based on the arbitration clause in the contract of service between them. To do otherwise will be tantamount to conducting a mini trial before the actual trial, an eventuality which is undesirable.
32. Commenting on the foregoing in the case of *Sameja v Sal Tree Hotel Limited* [2024] KEHC 14040 (KLR), the court stated as follows:-

“Making a final determination at an interlocutory stage is contrary to the settled principle that a court, at an interlocutory stage, is not expected to make a final determination of the issues that will be discussed at the trial.”
33. The court further notes that in their submissions on the instant application, the parties have focused their address on whether the Claimant has satisfied the conditions for grant of an order for interim injunction. Yet, there is no prayer for interim injunction in the application. What was sought by the Claimant is an order for stay and not interim injunction. These two are distinct and should not be conflated.
34. It is trite that parties are bound by and can only urge what they have pleaded. They are not entitled to seek reliefs which are not founded on their pleadings or application as the case may be (*Kahora v Ng'ang'a* [2025] KEHC 11888 (KLR)). As such, the parties to the instant application were bound to confine their submissions to the prayer for stay in the application. Consequently, the submissions on the relief for interim injunction, in so far as it was not pleaded in the application, are misdirected.

Determination

35. The upshot is that the court declines to grant the application dated 9th December 2025.
36. Costs of the application shall abide the outcome of the suit.

DATED, SIGNED AND DELIVERED ON THE 17TH DAY OF DECEMBER, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant/Applicant

.....for the Respondent



.....for the Interested Parties

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

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