



**Kenya Concrete Structural, Ceramic Tiles, Woodplys and Interior Design  
Workers Union v Cibien Engineering & Construction Company Limited  
(Cause E805 of 2023) [2026] KEELRC 116 (KLR) (23 January 2026) (Ruling)**

Neutral citation: [2026] KEELRC 116 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E805 OF 2023  
SC RUTTO, J  
JANUARY 23, 2026**

**BETWEEN**

**KENYA CONCRETE STRUCTURAL, CERAMIC TILES, WOODPLYS AND  
INTERIOR DESIGN WORKERS UNION ..... CLAIMANT**

**AND**

**CIBIEN ENGINEERING & CONSTRUCTION COMPANY  
LIMITED ..... RESPONDENT**

**RULING**

1. Through a judgment delivered on 25<sup>th</sup> July 2025, this Court dismissed the Claimants’/Applicants’ claim for recognition by the Respondent.
2. Consequently, the Claimant filed the present Notice of Motion dated 18<sup>th</sup> September 2025, seeking the following orders: –
  1. Spent.
  2. That, the Honourable Court to review the Judgement delivered on 25<sup>th</sup> day of July, 2025 regarding the Court failure to issue orders against the herein Respondent directing its management to recognize the herein Claimant Union for purposes of concluding a CBA within the meaning of the provisions of Section 54 of the Labour Relations Act, 2007, Laws of Kenya.
  3. That, an order do issue directing the management of the Respondent to recognize the herein Claimant Union as having recruited the majority of the Respondent's unionisable employees for purposes of concluding a CBA.
  4. That, the costs of this application be provided for.



3. The Motion is supported by the grounds set out on its face and by the Affidavit sworn on 17<sup>th</sup> September 2025 by Dishon Angoya, the Claimant's General Secretary. The Claimant avers that there is an error or mistake apparent on the face of the record arising from the Court's failure to issue orders directing the Respondent to recognize the Claimant herein.
4. It is further averred that the Court failed to consider the Claimant's pleadings, in which she prayed for orders compelling the Respondent to recognize the Claimant with a view to concluding a Collective Bargaining Agreement (CBA).
5. The Claimant further avers that, in its Ruling delivered on 9<sup>th</sup> February 2024, the Court stated at paragraph 39 that the prayer for recognition sought in the Statement of Claim could not be granted at that stage, as such an order required a full trial and evaluation of evidence from both parties to determine whether the Claimant had met the requisite threshold.
6. According to the Claimant, the Court's refusal to issue orders compelling the Respondent to grant recognition resulted from an oversight, hence the need for a review.
7. In the Supporting Affidavit, Mr. Angoya deposes that prior to the institution of the claim, the Claimant reported a trade dispute to the Ministry of Labour for conciliation on 30<sup>th</sup> January 2023, concurrently with the issue of trade union dues through different letters. That the dispute was admitted by the Ministry of Labour and Social Protection, and a Labour Officer, Philip Kemboi, was appointed as the conciliator vide a letter dated 11<sup>th</sup> April 2023.
8. He further states that, pursuant to the directions issued by the Court at paragraph 39 of the Ruling delivered on 9<sup>th</sup> February 2024, the Claimant, through an email dated 15<sup>th</sup> February 2025, forwarded a proposed recognition agreement to the Respondent.
9. Mr. Angoya further deposes that, in its Reply to the Statement of Claim, the Respondent acknowledged the existence of a dispute on the issue of recognition.
10. The Respondent opposed the Motion by way of a Replying Affidavit sworn on 15<sup>th</sup> October 2025 by its Chief Executive Officer, Mohammed Anzar Zain. Mr. Mohammed deposes that, on the advice of counsel, the Applicant has failed to meet the strict requirements for review under Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules, 2010, which limit the Court's jurisdiction on review.
11. He further states that the Claimant has not demonstrated the existence of any new or important matter or evidence that was not within its knowledge at the time of the hearing. In his view, the issues raised in the Motion concern the manner in which the Court evaluated and weighed the evidence, matters that properly fall within the domain of an appeal rather than a review.
12. Mr. Mohammed further avers that no error apparent on the face of the record has been established. He contends that the alleged inconsistencies or misapprehensions cited by the Claimant amount, at best, to disagreement with the Court's findings and conclusions, which do not constitute an error apparent on the record.
13. He adds that the Applicant has equally failed to demonstrate any sufficient reason to warrant a review of the judgment, describing the Application as a thinly disguised attempt to reopen the case and obtain a different outcome under the guise of review.
14. Mr. Mohammed further avers that the Honourable Court correctly found, at paragraph 18 of the judgment, that the Claimant had not produced any document demonstrating that it had initiated the process of obtaining a recognition agreement with the Respondent. He states that, on the advice of



counsel, this finding is conclusive, does not amount to an error apparent on the face of the record, and ought to have been challenged by way of an appeal.

15. Mr. Mohammed further avers that the Honourable Court was correct in finding that the trade dispute referred to conciliation by the Claimant, and which formed the subject of the claim before the Court, concerned the deduction and remittance of union dues.

### **Submissions**

16. The Application was canvassed by way of written submissions, which the Court has duly considered. The Claimant submits that it has satisfied the grounds for review of the Judgment delivered on 25<sup>th</sup> July 2025, and that the Court's oversight constitutes a sufficient reason warranting review, contrary to the Respondent's position.
17. The Claimant further submits that it has demonstrated that the issue of recognition was in dispute between the parties even prior to the institution of the claim, contrary to the Court's sentiments, which it contends amount to a mistake that the Court ought to revisit.
18. On the other hand, the Respondent submits that, having fully addressed the matter, the Claimant's assertion that the Court failed to consider the issue of recognition is a misrepresentation of the facts. The Respondent further contends that no error is apparent on the face of the record and that the Court is functus officio on the matter. The Respondent further posits that, if the Claimant is aggrieved by the Court's determination on the issue of recognition, the proper recourse is an appeal, not a review.

### **Analysis and Determination**

19. The Court has considered the Notice of Motion, the Respondent's Replying Affidavit, and the parties' rival submissions, and has identified the central issue for determination as whether the Claimant/Applicant has satisfied the legal threshold for the grant of a review order.
20. Rule 74(1) of the Employment and Labour Relations Court (Procedure) Rules, 2024, expressly provides 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.
21. The instant Application is premised on the assertion that there exists an error or mistake apparent on the face of the record, arising from the Court's failure to issue orders directing the Respondent to recognize the Claimant Union. On this score, the Claimant contends that the Court overlooked its pleadings, in which it sought an order compelling the Respondent to grant recognition.
22. A review of the Judgment delivered on 25<sup>th</sup> July 2025 reveals that the primary reason the Court disallowed the Claimant's claim for recognition was the absence of evidence that the Claimant had for requested recognition from the Respondent or submitted a draft recognition agreement prior to instituting the claim. The Court further observed that the Claimant had only forwarded a draft



recognition agreement to the Respondent by email on 18<sup>th</sup> May 2025, well after the institution of the suit.

23. Further to the foregoing, the Court observed that the trade dispute referred for conciliation by the Claimant was “the refusal to deduct and remit trade union dues.” Similarly, the Court noted that this issue was the same as that identified as being in dispute between the parties in the Statement of Claim.
24. It is on the basis of the foregoing that the Court concluded that the issue of recognition had never been in dispute between the parties and, therefore, had yet to crystallize.
25. The Court has also taken note of the letter dated 30<sup>th</sup> January 2023, addressed to the Ministry of Labour and Social Protection, identifying the trade dispute as “recognition agreement,” as well as the letter dated 11<sup>th</sup> April 2023 from the Ministry accepting the dispute and appointing a conciliator. Notably, the Claimant did not attach these letters to the Statement of Claim, and therefore, they were not before the Court for consideration at the time the matter was determined. In the circumstances, it cannot be said that the Court overlooked this evidence, as it was never placed before the Court for consideration.
26. The Claimant has also made reference to the Court’s Ruling delivered on 9<sup>th</sup> February 2024, particularly paragraph 39, where the Court noted that the Claimant had sought an order of recognition as one of its primary prayers. In the said Ruling, the Court observed that such an order could only be granted after a full trial and a thorough evaluation of evidence from both parties to determine whether the Claimant had met the requisite threshold for recognition.
27. It should be appreciated that the foregoing observation did not in any way equate to a finding on the existence of a dispute between the parties regarding recognition. Indeed, it was only after a full evaluation of the evidence on record that the Court found that the dispute concerning recognition had not crystallized.
28. In the final analysis, the Court finds that no error is apparent on the face of the record to justify a review.
29. Accordingly, the Notice of Motion dated 18<sup>th</sup> September 2025 is found to be without merit and is consequently dismissed, with no orders as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23<sup>RD</sup> DAY OF JANUARY, 2026.**

.....

**STELLA RUTTO**

**JUDGE**

In the presence of:

Mr. Angoya for the Claimant/Applicant

No appearance for the Respondent

Catherine 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**

