

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
MACHAKOS
CAUSE NO. E022 of 2024

**KENYA UNION OF DOMESTIC HOTELS EDUCATIONAL
INSTITUTIONS AND HOSPITALS
WORKERS...CLAIMANT/RESPONDENT
VERSUS
BOARD OF MANAGEMENT OF MACHAKOS
TECHNICAL INSTITUTE FOR THE
BLIND.....RESPONDENT/APPLICANT**

RULING

1. What comes up for determination is the Notice of Motion dated 22nd August 2025, in which the Respondent/Applicant seeks an order to vacate, set aside, or review the Consent Order dated 26th February 2025, adopted by the Court on 28th February 2025.
2. The Motion is supported by the grounds stated on its face and by the Affidavit of **Dr. P. Nduku Mutua**, the Applicant's Chief Principal and Secretary to the Board. The grounds in support of the Motion are that the consent dated 26th February 2025 was adopted without consideration of evidence and facts that

were not within the knowledge of the Machakos-based State Counsel handling the matter at the time.

3. That further, the consent was adopted due to material non-disclosure by the Claimant Union, resulting in an injustice to the Applicant.
4. In her Affidavit, Dr. Mutua avers that the newly appointed Board of Governors of the Applicant finds it difficult to implement the Consent Order and the terms of the Recognition Agreement dated 23rd July 2025, because at the time the consent was executed, no Board of Governors was in place at the Applicant institution, and the Claimant had not achieved the simple majority required under Section 54 of the Labour Relations Act, 2007.
5. She further avers that the current Chairperson of the Applicant's Board executed the Recognition Agreement on the understanding that failure to do so would expose him to being cited for contempt of court.
6. Dr. Mutua contends that the Applicant has since established that the Claimant Union had recruited casual employees as its members, notwithstanding that casual employees are not unionisable.

7. She avers that the Claimant Union deliberately misrepresented facts and misled this Honourable Court by stating that the Applicant had 29 employees and had recruited 23 employees into the union.
8. According to Dr. Mutua, the Applicant had 45 employees at the time the suit was instituted and 44 employees at the time of executing the Consent. She adds that the Claimant Union had only recruited 14 unionisable employees, which is well below the simple majority required under Section 54(1) of the Labour Relations Act.
9. Dr. Mutua further avers that the Applicant is aware that the Claimant Union submitted a list of 14 members using a forged Applicant letterhead, an act bordering on criminality.
10. She avers that she has also been advised by the State Counsel on record, whose advice she believes to be correct, that the Claimant's actions are tainted with illegality, constitute material non-disclosure to this Honourable Court, and accordingly, the Claimant should not be allowed to benefit from the consent orders.

11. The Notice of Motion is opposed. In a Response dated 11th November 2025, the Claimant avers that three State Counsels sat, deliberated, and advised their client accordingly, and that the union presented all material evidence to both the counsels and their client.
12. It is the Claimant's assertion that Check-Off forms were submitted, received, and copies were stamped for acknowledgment of delivery, with minutes of the meetings shared with the State Counsel's office via email.
13. The Claimant contends that the Applicant did not request any additional documents, as it was advised that the Check-Off form 'S' sufficed under Section 48 of the Labour Relations Act.
14. The Claimant further states that it met twice with the Applicant's new Board, deliberated on the matters at hand, and made amendments where necessary before signing the Recognition Agreement.
15. It is the Claimant's further contention that the issue of simple majority was a central matter in the main suit, which the Applicant failed to prove or disprove before the Court.

Submissions

16. The Applicant contends that the consent order dated 26th February 2025 is tainted by misrepresentation, illegality, and incapacity.
17. The Applicant submits that the Claimant Union misrepresented both the number and the calibre of unionisable employees, as well as the number of employees they had actually recruited.
18. On the issue of illegality, the Applicant submits that the Claimant Union presented a list of 14 members on a forged letterhead, despite having recruited only 14 unionisable employees, well below the simple majority required under Section 54(1) of the Labour Relations Act.
19. Regarding incapacity, the Applicant argues that the consent order was executed without the sanction of the full Board of Directors, as there was no Board of Governors in place at the time.
20. The Claimant submits that the Applicant convened a full Board meeting (the new Board) and invited the Union, during which the Board indicated that it would sign the recognition agreement after consultations. The Claimant further

contends that the Board's secretary misinformed the Applicant's newly appointed counsel.

21. The Claimant has submitted that the Applicant convened a full Board meeting (new board) and invited the Union. That the board promised, after consultation, that they would sign the recognition agreement. The Claimant has further contended that the secretary of the Board has misinformed the new counsel on record for the Applicant.

Analysis and Determination

22. I have considered the instant Motion, the Claimant's Response, and the rival submissions, and find that the sole issue for determination is whether there are grounds to set aside or review the consent judgment entered by the Court on 28th February 2025.


23. The law regarding the variation of a consent judgment is well settled: such a judgment can only be varied on grounds that would justify the setting aside of a contract. These grounds include, but are not limited to, fraud, collusion, illegality, mistake, an agreement being contrary to court policy, the absence of sufficient material facts, or ignorance of material facts.

24. This position was reaffirmed by the Court in *Brooke Bond Liebig Ltd v Mallya* (1975) EA 266, where it was held as follows:

“It is well settled that a consent judgment can be set aside only in certain circumstances, e.g on grounds of fraud or collusion, that there was no consensus between the parties, public policy or for such reasons as would enable a court to set aside or rescind a contract.”

25. Similarly, in *Kenya Commercial Bank Ltd v Specialised Engineering Co. Ltd* [1982] KLR 485, it was held that:

“A consent order entered into by counsel is binding on all parties to the proceedings and cannot be set aside or varied unless it is proved that it was obtained by fraud or collusion or by an agreement contrary to the policy of the court or where the consent was given without sufficient material facts or in misapprehension or ignorance of such facts in general for a reason which would enable the court to set aside an agreement.”



26. In this case, the Applicant’s primary contention is that the consent was entered into without consideration of evidence and facts that were not within the knowledge of the Machakos-based State Counsel handling the matter at the time. The Applicant further contends that the Claimant had recruited only 14

employees from the Applicant institution, and therefore had not met the threshold required under Section 54(1) of the Labour Relations Act.

27. The Applicant further alleges illegality, asserting that the Claimant Union submitted names using a forged letterhead. Additionally, the Applicant contends that it did not have a Board in place at the relevant time, and therefore, the consent was not sanctioned by the Board.

28. On the other hand, the Claimant contends that it submitted all material evidence to the counsel on record for the Applicant. It further states that the Check-Off form 'S' was submitted, received, and copies were stamped to acknowledge delivery.

29. From the record, the Applicant was represented at the time by State Counsel **Mercy Mumo**, who signed the consent on its behalf. It is noteworthy that the Applicant has not suggested or indicated that Ms. Mumo lacked full instructions to enter into the consent as she did. On this issue, I hold the view expressed by the Court in the case of **Kenya Commercial Bank Ltd vs Specialised Engineering Co. Ltd [supra]** that a duly instructed advocate has an implied general authority to compromise and settle the action and the client cannot avail

himself of any limitation by him of the implied authority to his advocate unless such limitation was brought to the notice of the other side.

30.Regarding the alleged misrepresentation by the Claimant Union, the annexures to the Memorandum of Claim show that the Claimant provided a list of the members it claimed to have recruited. As the primary custodian of employee records, the Applicant was in a position to verify whether the number of employees recruited by the Claimant met the threshold for recognition. In this context, it is unclear how the Claimant could be said to have misrepresented facts to the Applicant, given that the Applicant itself holds the employee records.

31.Further, although the Applicant asserts that it did not have a Board in place at the material time, there is no evidence to support this claim. Indeed, no details have been provided regarding when the new Board was appointed or when the former Board vacated office. In any event, failures in instructions between the Applicant and its advocate cannot be a basis for setting aside the consent order.

32.With regard to the allegation that the Claimant Union submitted a list of 14 members using a forged letterhead, it is noteworthy that the list of employees referred to in Dr. Mutua's affidavit contains more than 14 names. Moreover,

under normal circumstances, the Applicant should have been in possession of this information at the time the consent was entered into. In the circumstances, it is unclear why the Applicant now alleges illegality in respect of a document it ought to have had in its possession all along.

33. In light of the foregoing, the Applicant's claims of misrepresentation, incapacity and illegality are without merit.

Orders

34. Accordingly, the Court declines the Applicant's Motion dated 22nd August 2025 seeking to set aside the consent judgment adopted on 28th February 2025. There will be no orders as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 4th day of February 2026.

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STELLA RUTTO

JUDGE

In the presence of:

No appearance

Mr. Kioko

Catherine

for the Claimant/Respondent

for the Respondent/Applicant

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 15th March 2020 and subsequent directions of 21st 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