

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS**  
**COURT AT KISUMU**

**CAUSE NO. E098 OF 2025**

*(Before Hon. Justice Dr. Jacob Gakeri)*

**KENYA ENGINEERING WORKERS**  
**UNION.....CLAIMANT**

*VERSUS*

**MORAL BUSINESS CONSULTING.....**  
**RESPONDENT**

**RULING**

The claimant union commenced the instant suit on 5<sup>th</sup> November 2025 vide a Memorandum of Claim dated 5<sup>th</sup> November 2025 seeking an Order to compel the parties to sign a Recognition Agreement.

The 2<sup>nd</sup> respondent entered appearance on 5<sup>th</sup> December 2025 and simultaneously filed a Notice of Motion seeking the striking out of the 2<sup>nd</sup> respondent's name from the suit on the premises that there was no employer/employee relationship between the claimant and the 2<sup>nd</sup> respondent and the respondents had an outsourcing agreement.

The court dismissed the application vide its ruling delivered on 5<sup>th</sup> February 2026.

The 1<sup>st</sup> respondent entered appearance on 17<sup>th</sup> December 2025.

On 15<sup>th</sup> January 2026, the 1<sup>st</sup> respondent filed a Notice of Preliminary Objection dated 13<sup>th</sup> January 2026 contending that the claimant union had no *locus standi* to file the instant suit as there was no *nexus* between the two.

The objection is based on the grounds that:

1. *The particulars of which are to be included in the Form S (check off Form) are union membership number, name of member, members signature and date.*
2. *That there is no union membership number entered in the claimant's purported Form S apart from the purported members name, signature and dates.*
3. *That the said membership numbers ought to emanate from the unions register book containing the list of members sequentially.*
4. *That entries 1 to 8 were entered or inserted by the same individual as the handwriting was similar.*

*5. That no payment receipts were attached for individual members and amount paid.*

The 1<sup>st</sup> respondent grounded the Notice of Preliminary Objection on the provisions of section 48 of the Labour Relations act.

By Grounds of Opposition dated 28<sup>th</sup> January 2026 the claimant union contended that:

- 1. The 1<sup>st</sup> respondents representative was purporting to act as an advocate.*
- 2. The issue in dispute was the respondents refusal to sign a Recognition Agreement as opposed to union dues which had been done.*
- 3. The 1<sup>st</sup> respondent's Notice of Preliminary Objection was grounded on facts not a point of law.*

It is trite that whenever a Preliminary Objection is raised, it ought to be disposed of at the earliest instance because of its potential to terminate the proceedings at that stage.

While the 1<sup>st</sup> respondent contends that its Notice of Preliminary Objection is grounded on the provisions of Section 48 of the Labour Relations Act, on deduction of trade union dues, the claimant maintained that the Notice

of Preliminary Objection was not based on a point of law but facts, material that required a full hearing of the suit.

It is thus important to determine whether the 1<sup>st</sup> respondent's Notice of Preliminary Objection raises a competent Preliminary Objection.

The *locus classicus* rendition of what constitutes a Preliminary Objection are the sentiments of Law and Sir Charles Newbold, P JJA in **Mukisa Biscuit Manufacturing Co. Ltd V West End Distributors Ltd** [1968] EA 696

Law JA stated

*"... A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration".*

Sir Charles Newbold on the other hand added:

*"A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is*

*argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion” emphasis added.*

On the *locus standi* of a union to represent its members, the sentiments of the Court of Appeal in **Modern Soap Factory Ltd V Kenya Shoe & Leather Workers Union [2020] eKLR** are instructive:

*“...In our judgment, we can see no reason why a registered trade whose constitution so empowers, should not have standing to initiate a claim on behalf of its members in court... That said, whether an employee is a member of a union is a question of act. Where there is a contest as to whether an employee is a member of union evidence would be required to settle the question. It is not a matter amenable for determination on the basis of a Preliminary Objection”*

These sentiment apply on all fours to the circumstances of the instant suit.

(See also in this regard **Rika J in Kenya Shoe & Leather Workers V Falcon Tanners Ltd** ELRCC No. 826 of 2016 and Ndolo J. (as she then was) in **Kenya**

## **Shoe and Leather Workers Union V Modern Soap Factory** ELRC No. 615 of 2014.

As adverted to elsewhere in this ruling, the 1<sup>st</sup> respondent's Notice of Preliminary Objection is exclusively grounded on the contents Form S (Check-off form), making of entries number 1-8 and attachment of payment receipts of individual members of the union. The 1<sup>st</sup> respondent appears to be questioning whether the alleged grievants were members of the claimant union.

It is trite that the requirements of a prescribed form, attachments in support and making of entries are matters dependent on evidence and as correctly asserted by the claimant in its Grounds of Opposition, they require a full hearing to discern.

Similarly, other than ground number 3 of the Grounds of Objection, Ground 1 and 2 raise factual issues.

Significantly, the law prescribes the contents of Form S.

Under Section 48 of the Labour Relations Act,

**(1)** ...

**(2)** ...

**(3) An employer in respect of whom the minister has issued an Order under sub-section (2) shall commence deducting the trade union dues from employee's wages within thirty days of the trade union serving a notice in Form S set out in the Third Schedule signed by the employees in respect of whom the employer is required to make a deduction.**

It is correct as contended by the 1<sup>st</sup> respondent that Form S ought to contain the union membership number, name of member, date and signature of each member.

Neither the provisions of Section 48 nor the Third Schedule to the Act prescribe for the source or origin of union membership numbers raised by the 1<sup>st</sup> respondent.

In the court's view, that point entrenches the fact that the 1<sup>st</sup> respondent's Notice of Preliminary Objection is grounded on issues of fact as opposed to law as contended by the claimant.

The upshot of the foregoing is that the court is not persuaded that the 1<sup>st</sup> Respondent's Notice of Preliminary Objection meets the threshold in **Mukisa Biscuit**

**Manufacturing Co. Ltd V West End Distributors Ltd**  
(supra) and it is accordingly dismissed with no order as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT  
KISUMU ON THIS 5<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**DR. JACOB GAKERI**

**JUDGE**

**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 has 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.

**DR. JACOB GAKERI**  
**JUDGE**

ORIGINAL