



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT  
NAIROBI**

(ON Makau J on 26<sup>th</sup> February, 2026)

**CAUSE NO. E922 OF 2025**

**KENYA CHEMICAL WORKERS**

**UNION.....CLAIMANT**

**-VERSUS-**

**MILLY GLASS WORKS**

**LIMITED.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Claimant is trade union registered to represent workers in the chemical, manufacturing, processing, glass production

and allied industries. The Claimant and the Respondent signed a Recognition Agreement on 16<sup>th</sup> December 2013, and the same remains in force to date. The two parties have also concluded CBAs which governs the contract between the Respondent and its unionisable employees. The last CBA was signed on 10<sup>th</sup> March 2022 and it was for the period 1<sup>st</sup> January 2019 to 31<sup>st</sup> December 2020.

2. By a Memorandum of Claim dated 19<sup>th</sup> September 2025, the Claimant instituted these proceedings against the Respondent alleging that the Respondent had unlawfully refused to engage in negotiations for a successor Collective Bargaining Agreement, and thereby violating multiple statutory provisions and fundamental constitutional rights. Therefore it prayed for the following reliefs:-

***a) A declaration that the Respondent's persistent, unwarranted, and unjustified refusal to enter into negotiations for a Collective Bargaining Agreement constitutes a blatant violation of Section 54 of the Labour Relations Act, 2007, an***

***unfair labour practice and gross infringement of the employees' constitutional rights under Articles 36, 41, and 47 of the Constitution of Kenya, 2010.***

***b) A permanent injunction compelling the Respondent, whether by itself, its directors, managers, agents, servants, employees, or any other person acting under its instruction or authority, to immediately commence, engage in, and proceed with continuous, meaningful, and good faith negotiations with the Claimant in strict compliance with the provisions of Section 54 of the Labour Relations Act, with the aim of concluding a Collective Bargaining Agreement governing the terms and conditions of service for the unionisable employees within a reasonable and Court-supervised timeframe.***

***c) General, aggravated, and exemplary damages for the violation of the Claimant's and its members'***

***constitutional rights, the precise quantum thereof to be assessed by this Honourable Court.***

***d) An order for the payment of the costs of this suit, together with interest thereon at court rates from the date of filing until payment in full.***

***e) Any other or further relief that this Honourable Court may deem fit and just to grant in the circumstances of this case.***

3. The Respondent filed a Memorandum of Response and Counterclaim dated 27<sup>th</sup> October 2025 admitting the existence of the Recognition Agreement and the previous Collective Bargaining Agreement but denied that it had unlawfully refused to negotiate. It averred that the Claimant had lost significant membership among the Respondent's unionisable employees and currently represented only 51 out of 487 unionisable employees, constituting approximately 10.97% of the Respondent's unionisable workforce. The Respondent contended that the Claimant no longer met the statutory threshold for recognition under Section 54(1) of the Labour Relations Act, which requires a

trade union to represent a simple majority of unionisable employees to be entitled to collective bargaining.

4. The Respondent further averred that it had filed an application with the National Labour Board in March 2025 seeking to revoke the Recognition Agreement on account of the loss of majority representation, which application remained pending. The Respondent contended that its refusal to negotiate was therefore lawful and justified, and that compelling collective bargaining with a union lacking majority representation would be unfair to the majority of employees who had chosen not to associate with the union and could cause unrest within the organization.

5. By way of Counterclaim, the Respondent prayed for:-

***a) That the Recognition Agreement entered into between the parties herein on 16<sup>th</sup> December 2013 be revoked and/or terminated.***

***b) That the costs of this suit be awarded to the Respondent.***

**c) *That this Honourable Court do grant such further or other relief as it may deem just and expedient in the circumstances.***

6. The Claimant filed a Memorandum in Reply to the Respondent's Response and a Defence to the Counterclaim dated 3<sup>rd</sup> November 2025, vehemently denying that it had lost its majority membership. It asserted that a Recognition Agreement, once duly registered and acted upon, creates a continuous and stable bargaining relationship that is not subject to day-to-day fluctuations in membership. The Claimant further contended that the Respondent's attempt to unilaterally determine the Union's membership strength and use it as a pretext to avoid collective bargaining was unlawful, premature and in bad faith. The Claimant further averred that the Respondent's Counterclaim was premature and misconceived as the proper forum for the initial determination of a recognition dispute is the National Labour Board under Section 54(5) and (6) of the Labour Relations Act.

7. On 6<sup>th</sup> November 2025, the parties agreed to dispense with oral testimony and adopted their written witness statements and documentary evidence as their respective evidence. Thereafter both parties filed written submissions.

### **Evidence**

8. The Claimant's case is grounded on witness statement by its National General Secretary, Peter Ouko Onyango, dated 19<sup>th</sup> September 2025. He confirmed that the Claimant and the Respondent have enjoyed a long-standing collective bargaining relationship spanning several years, which relationship has been governed by a Recognition Agreement dated 16<sup>th</sup> December 2013 which remains in force todate. They have successively negotiated and duly registered Collective Bargaining Agreements (CBAs), the most recent of which was negotiated, mutually agreed upon and formally registered in this Honourable Court to cover the period from 1<sup>st</sup> January 2019 to 31<sup>st</sup> December 2020.

9. He contended that upon the natural expiration of the aforementioned Collective Bargaining Agreement on 31<sup>st</sup>

December 2020, the Claimant, following global economic disruptions, deliberately paused the immediate initiation of fresh negotiations, a common practice in industrial relations to allow for comprehensive review and consultation.

10. He further stated that on or about 28<sup>th</sup> January 2025, following extensive internal consultations and the conclusion of its strategic review, the Claimant wrote to the Respondent's Managing Director, cordially inviting the Respondent to commence preliminary discussions necessary for the negotiation of a successor Collective Bargaining Agreement to govern the employment relationship for the ensuing period.

11. On 11<sup>th</sup> March 2025, the Respondent's rejected the invitation to negotiate, contending that the Claimant no longer commanded the support of a simple majority of the unionisable employees in the enterprise. The issue of diminished membership, was raised for the very first time after the Claimant sought to reactivate CBA negotiation after a prolonged period of mutual inactivity, and therefore, it was

deemed a clever way of evading the core statutory and contractual obligations.

12.As a result, the Claimant formally reported a trade dispute to the Cabinet Secretary for Labour and Social Protection on 19<sup>th</sup> March 2025, thereby triggering the statutory conciliation process under the auspices of the Ministry. Mr. Abubakar Nkoe, was appointed conciliator and by a Report dated 8<sup>th</sup> July 2025, he noted the Respondent's membership concerns, but rejected the Respondent's outright refusal to negotiate CBA with the Claimant. On the contrary, the conciliator recommended that the parties continue to engage in negotiations for the new CBA. The Conciliator's core operative recommendation was that both parties were advised to continue to engage in the negotiation until such time when their recognition agreement was revoked through the proper legal procedure.

13.He stated that in a final, magnanimous, and conciliatory attempt to break the deadlock, the Claimant's National General Secretary wrote a letter to the Respondent dated

18th July 2025 urging, the Respondent to return to the negotiating table, while simultaneously working towards resolving the ancillary membership issue. However, the respondent wrote a letter dated 8<sup>th</sup> August 2025, rejecting the invitation, which amounted to breach of Recognition Agreement.

14.He contended that the Respondent's conduct has caused the Claimant and its members to suffer immense prejudice, including denial of their right to collectively determine their terms and conditions of employment, financial and economic prejudice due to stagnant wages.

15.Regarding the Respondent's Counterclaim, he averred that it is utterly premature and constitutes a gross abuse of this Honourable Court's process, as the Respondent, has already voluntarily submitted itself to the jurisdiction of the National Labour Board on the same issue of recognition. Therefore he maintained that the counter claim circumvents and undermines the statutory process.

16.He maintained that the Recognition Agreement dated 16<sup>th</sup> December 2013 remains a valid, binding, and legally enforceable contract between the parties, and it continues to govern their relationship until such a time as it is formally and lawfully revoked by the competent authority and no by a unilateral declaration by the respondent.

17.The Respondent did not file a witness statement but relied on its pleadings. It admitted that it signed a Recognition Agreement pursuant to court orders and subsequently the parties concluded a Collective Bargaining Agreement pursuant to further Court proceedings. It further averred that following the expiry of the said Collective Bargaining Agreement in December 2020, the Claimant lost significant membership among its unionisable employees leaving only 51 out of 487 equaling approximately 10.97% of the company's unionisable workforce.

18.It averred that the Collective Bargaining Agreement between the parties having expired in December 2020, and the Claimant only invited it to negotiate a new CBA by a letter

dated 28<sup>th</sup> January 2025, nearly five years after the expiry of the last Collective Bargaining Agreement. It responded by letter dated 11<sup>th</sup> March 2025, highlighting that the union no longer held the support of a simple majority of unionisable employees and that the Respondent could not therefore proceed with negotiations.

19.The Respondent confirmed that, in March 2025, it filed an application with the National Labour Board pursuant to Section 54(5) of the Labour Relations Act seeking revocation of the recognition agreement with the Claimant on account of the loss of majority representation. The application is still pending determination by the National Labour Board.

20.The Respondent maintained that negotiations could not proceed without compliance with Section 54(1) of the Act, and further noting that the question of recognition was still pending before the Labour Board. It confirmed that the Claimant reported the dispute to the Cabinet Secretary for Labour and Social Protection by a letter dated 19th March 2025, accusing it of refusal to negotiate a new CBA Mr.

Abubakar Nkoe was appointed conciliator. Both parties attended, and were heard during the conciliation meeting.

21. The Respondent noted that the Conciliator's Report dated 8<sup>th</sup> July 2025, contained a finding that the union admitted it currently represented only 33 out of 469 unionisable employees and recommended verification of the union's membership and recourse to court action to ensure compliance with statutory requirements.

22. Following the conciliator's report, the Claimant issued a letter dated 18<sup>th</sup> July 2025 calling for negotiations of a new Collective Bargaining Agreement. However, the Respondent replied, disagreeing with the conciliator's recommendations, and invited the union to seek a certificate of unresolved dispute in order to escalate the matter to this Honourable Court under Section 54(7) of the Labour Relations Act.

23. The Respondent denied that it has deliberately refused or disregarded its statutory duty to negotiate, maintaining that it is exercising its constitutional right to fair labour practices as guaranteed under the Constitution of Kenya. It further

denied violating Section 54 of the Labour Relations Act as alleged, asserting that the dispute herein turns on the proper interpretation and application of Section 54 and the principle of majority representation.

24. The Respondent also denied the alleged constitutional violations under Articles 36, 41, and 47 of the Constitution, asserting that all employees who wish to associate with the Claimant are free to do so, and averred that the Claimant has not demonstrated any unfair administrative action.

25. The Respondent contended that its refusal to negotiate arises solely from the Claimant's lack of majority representation and consequent non-compliance with the law. It further contended that compelling collective bargaining with the Claimant despite this would be unfair to the majority of employees who have chosen not to associate with the union and could cause unrest within the organization.

26. The Respondent further contended that this Honourable Court lacks jurisdiction over the matter on the basis that the

Claimant has invoked the wrong provisions of the Labour Relations Act, as the dispute before the Court concerns the continued recognition of the Claimant under Section 54 of the Labour Relations Act, which falls outside the provisions relied upon.

27. Regarding its Counterclaim, the Respondent averred that the Claimant has, over time, lost the majority representation among the Respondent's employees which formed the basis of the Recognition Agreement entered into between the parties, and therefore the Claimant has ceased to meet the statutory threshold prescribed under Section 54 of the Labour Relations Act. The Respondent further averred that continued recognition of the Claimant under the current circumstances is unlawful, unreasonable, and contrary to the intent and spirit of the Labour Relations Act, which requires that only a trade union representing the majority of employees in a workplace may enjoy recognition for purposes of collective bargaining.

28.The Respondent further averred that maintaining the Recognition Agreement in force despite the Claimant's loss of majority representation undermines employees' freedom of association as guaranteed under the Constitution. Besides, continuing to negotiate a collective bargaining agreement in these circumstances would amount to a violation of its right to fair labour practices and may cause unnecessary disharmony and unrest within the organization.

29.The Respondent averred that it has taken all necessary steps to seek the revocation of the Recognition Agreement dated 16th December 2013, including formally writing to the National Labour Board, but the Board has failed to take any action to date. The Respondent therefore contended that there exists sufficient basis for this Honourable Court to intervene and grant the orders sought in the Counterclaim.

30.Having considered the pleadings, evidence and the submissions filed by the two sides, the following issues fell for determination:-

- a) Whether this Honourable Court has jurisdiction to entertain the dispute herein.
- b) Whether a recognition agreement and the attendant duty to bargain can be judicially enforced notwithstanding loss of majority representation and pending revocation proceedings before the National Labour Board.
- c) Whether the Claimant is entitled to the reliefs sought in the Memorandum of Claim.
- d) Whether the Respondent's Counterclaim for revocation of the Recognition Agreement dated 16th December 2013 is merited.

### **Jurisdiction**

31. The Respondent raised a preliminary objection on jurisdiction, contending that this Honourable Court lacks jurisdiction to entertain the matter on the basis that the Claimant has invoked the wrong provisions of the Labour Relations Act. The Respondent argued that the dispute before the Court concerns the continued recognition of the

Claimant under Section 54 of the Labour Relations Act, which falls outside the provisions relied upon by the Claimant, namely Section 62 of the Act.

32. Section 12 of the Employment and Labour Relations Court Act, 2011 vests this Court with exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of the Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations. Section 12(1)(a) specifically provides that the Court has jurisdiction to hear and determine disputes relating to or arising out of employment between an employer and an employee, including disputes concerning the terms of employment, the breach of a contract of employment, and the termination of employment.

33. Section 12(1)(b) further provides that the Court has jurisdiction to hear and determine disputes between an employer and a trade union, including disputes concerning

the recognition of a trade union, the negotiation and conclusion of collective agreements, and the interpretation and enforcement of collective agreements.

34. The dispute before this Court, as framed by the Claimant, is a dispute between an employer and a trade union relating to the negotiation of a collective agreement, which falls squarely within the definition of a "trade dispute" under Section 2 of the Labour Relations Act, 2007. The fact that the Respondent has raised the issue of recognition as a defence to the claim does not oust the jurisdiction of this Court. Indeed, Section 54(7) of the Labour Relations Act expressly contemplates that where a dispute relating to recognition remains unresolved after conciliation, either party may refer the dispute to this Court for determination.

35. The Conciliator's Report dated 8th July 2025 confirms that the dispute was reported to the Cabinet Secretary for Labour, a conciliator was appointed, and the conciliation process was undertaken but failed to resolve the dispute. The Conciliator's report further recommends recourse to

court action. The jurisdictional gateways have therefore been properly activated.

36. Accordingly, this Court finds and holds that it has jurisdiction to hear and determine this dispute filed by the claimant. The Respondent's objection on jurisdiction is hereby overruled. On the flip side, I find that the court has no jurisdiction to entertain the counterclaim because the law provides a statutory procedure for seeking revocation of a recognition agreement. Section 54(5) of the Labour Relations Act provides that:

***“an employer or employers’ association may apply to the Board to terminate or revoke a recognition agreement.”***

37. In **Kenya Private University Workers Union v Africa Nazarene University (Cause No. 900 of 2017) [2023] KEELRC 1982 (KLR)**, this Court, Rika J held that:-

***“This Court would be usurping the role of the National Labour Board if it determined the revocation process prematurely.”***

38. In view of the above express provision of the statute, and the persuasive decision, I find and hold that the revocation of the recognition agreement cannot proceed before the Board and the court at the same time. Since the statutory process has not exhausted, I down my tools on the counterclaim by striking out the same.

**Judicial enforcement of recognition agreement and duty to negotiate new CBA.**

39. There is no doubt that the claimant lost a significant percentage of representation below the required simple majority to about 10% of the respondent's unionisable workforce. There is also no dispute that the respondent has since applied to the Laour Board for revocation of the recognition agreement signed between it and the claimant in 2013.

40. Section 54(1) of the Labour Relations Act, No. 14 of 2007 provides as follows:-

***"An employer, including an employer in the public sector, shall recognize a trade union for***

***purposes of collective bargaining if that trade union represents a simple majority of unionisable employees."***

41. In said case of **Kenya Private University Workers Union v Africa Nazarene University (Cause No. 900 of 2017) [2023] KEELRC 1982 (KLR)**, this Court, further Rika J held that:-

***"The Court notes that there had been a significant decline in the Claimant Union's membership... which number was below the simple majority representation threshold required by law."***

42. The Court proceeded on the basis that once majority representation is lost, the statutory foundation for continued recognition and bargaining is fundamentally undermined.

43. In **Kenya Engineering Workers Union v Engineering Supplies Limited (Cause E006 of 2024) [2025] KEELRC 447 (KLR)**, the Court emphasized that:-

***"Recognition flows from the union's ability to demonstrate that it commands the support of the majority of unionisable employees, and where that support is lacking, the legal basis for collective bargaining falls away."***

44. The provision is couched in mandatory terms. It establishes that the right to recognition, and consequently the right to compel an employer to engage in collective bargaining, is contingent upon the trade union demonstrating that it represents a simple majority of the unionisable employees in the employer's establishment. This is not a mere procedural technicality but a substantive condition that goes to the very heart of collective bargaining legitimacy.
45. The principle of majoritarianism in labour relations ensures that a trade union that purports to negotiate terms and conditions of employment on behalf of workers does so with the democratic mandate of the majority of those workers. A collective bargaining agreement negotiated by a minority union and imposed on a majority of workers who are not

members of that union would lack democratic legitimacy and could potentially undermine industrial harmony rather than promote it.

46. In the present case, it clear that the Claimant currently represents as few as 33 out of 469 employees at the material time as per the Conciliator's Report. In fact, the Claimant, has not seriously contested these figures but only raised concerns about the inconsistency between the figures of 487 and 469 unionisable employees presented by the Respondent.

47. The Claimant's primary contention is that the Recognition Agreement, once duly registered and acted upon, creates a continuous and stable bargaining relationship not subject to day-to-day fluctuations in membership. The Claimant argues that the Respondent's attempt to unilaterally determine the Union's membership strength and use it as a pretext to avoid bargaining is unlawful, premature, and in bad faith. The conciliator seems to agreed with the Claimant in his report.

48. This Court must however, respectfully disagree with the Claimant and the conciliator on the foregoing position. While it is true that a recognition agreement creates a stable bargaining relationship, that stability is not absolute or immutable. The relationship is predicated upon the union's continued representativity. Where the union loses a significant majority support, like in this case, the foundation of the relationship is fundamentally undermined. It follows that the court may only excuse a situation where the loss of membership after the recognition is not so significant as to render the representation to be unreasonably low or negligible.

49. This Court finds the authorities cited by the Respondent, persuasive and applicable to the circumstances of this case. There is evidence including the Conciliator's Report, that the Claimant represents only a small minority of the Respondent's unionisable employees. Such proof is fatal to the claim for an order to compel the Respondent to engage in collective bargaining. The statutory precondition for such

compulsion is majority representation which is manifestly absent.

50. The Claimant's argument that the Recognition Agreement subsists until it is formally revoked by the National Labour Board, but I must agree with Rika J in In said case of **Kenya Private University Workers Union v Africa Nazarene University (Cause No. 900 of 2017) [2023] KEELRC 1982 (KLR), this Court** where he held:-

***“The Court will not wade into the murky waters and direct parties to conclude the process before the National Labour Board.”***

51. In similar manner, I find that it is within the rights of the respondent to decline to negotiate new CBA with the claimant pending the determination of the application for revocation of the recognition agreement unless the claimant recruits new members to hit the legal threshold of a simple majority required under section 54 of the Labour Relations Act. Accordingly, I find and hold that the refusal by the respondent to negotiate new CBA is within the law and this

court should not compel it to negotiate a new CBA with the claimant.

52. In **Kenya Union of Commercial Food and Allied Workers v Mombasa Water Supply and Sanitation Company Limited [2017] KEELRC 675 (KLR)**, this Court declined to issue coercive orders while a recognition dispute was pending before the appropriate statutory forum. The Court observed that to do so would amount to parallel adjudication and institutional overreach.
53. To compel the Respondent to bargain with a minority union while the Board determines the revocation application would be to impose a bargaining relationship that lacks democratic legitimacy and catalyze tension and conflict at the shop floor. Consequently, though formally subsisting pending determination by the National Labour Board, this court desists from exercising its enforcement jurisdiction to compel collective bargaining where the statutory precondition of majority representation is manifestly and admittedly absent.

54. The Claimant alleged that the Respondents refusal to negotiate new CBA amounts to violation of the right to fair labour practices but that allegation lacks merits. I say so because all that the Respondent is demanding is for the Claimant to prove that it is representing a simple majority of its unionisable staff, which has not been done. The Respondent has not prohibited the Claimant from recruiting its employees into membership and therefore, the alleged unfair labour practices has not been substantiated.

### **Reliefs**

55. I have found that the Claimant does not represent the required simple majority of the Respondent's unionisable workforce and that the Respondent had applied for revocation of the Recognition Agreement herein even before the filing of this suit by the Claimant. The application for revocation of recognition is yet to be determined. In the circumstances, I find that the Claimant is not entitled to the reliefs sought including declaratory order that the refusal to negotiate new CBA was unlawful and a gross violation of the

constitution, mandatory injunction to compel the Respondent to negotiate a new CBA and damages for constitutional violations.

### **Conclusion**

56. I have found that the Claimant has not proved his case on a balance of probability. I have further found that the court lacks jurisdiction to entertain the Respondent's counterclaim. Consequently, I dismiss the Claimant's claim and strike the Respondent's counterclaim. Each party shall bear its own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 26<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**ONESMUS MAKAU**

**JUDGE**

**Appearance:**

Mutongoi for the Claimant

Weru for the Respondent