

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE NO. E047 OF 2025

**KENYA UNION OF COMMERCIAL
FOOD & ALLIED
WORKERS.....CLAIMANT**

VERSUS

**KITHUNGURURU FARMERS CO-OP SOCIETY
LTD.....RESPONDENT**

RULING

1. What comes up for determination is the Respondent’s Notice of Preliminary Objection dated 10th December 2025, which raises the following grounds:

- 1. That this Court lacks jurisdiction to entertain the Claimant’s claim on wage and allowance increments before the Salaries and Remuneration Commission’s input as per circular SRC/AD/CIR/1/13 VOL. IV (28) of 14th October 2019.*
- 2. The jurisdiction of this Honourable court has been prematurely invoked by the Claimant since the avenues under SRC/ADM/CIR/1/13 VOL. IV (28) on resolution of a stalemate has not been exploited.*

2. The Claimant opposed the Preliminary Objection by filing a Replying Affidavit on 14th January 2026, sworn by its acting General Secretary, **Andrew Kinyua M'Mukiri**. Mr. Kinyua has averred that the Claimant's members within the Respondent's establishment are not public officers and, therefore, their terms and conditions of service do not fall under the scrutiny, advice, or approval of the Salaries and Remuneration Commission (SRC). He further deposes that the circular cited by the Respondent applies only to state and public officers and is therefore inapplicable to the Respondent's employees, who are not part of the public service.

3. Mr. Kinyua has also contended that the circular in question is not directed at co-operative societies.

Submissions

4. On 16th December 2025, the Court directed that the Preliminary Objection be canvassed through written submissions. Both parties complied, and the Court has duly considered their respective submissions.

5. In support of the Preliminary Objection, the Respondent submitted that it is registered under the Co-operatives Societies Act and that its employees are

public officers. It further contended that its employees form part of the public service and are therefore bound by SRC circulars.

6. Referencing the case of *Salaries and Remuneration Commission v National Hospital Insurance Fund, Management Board & 2 others [2024] KECA 419 (KLR)*, the Respondent argued that SRC involvement in Collective Bargaining Agreement (CBA) negotiations is mandatory, and any attempts to circumvent SRC directives (SRC/ADM/CIR/1/13 VOL. IV (28)) have been frowned upon by the Courts.
7. The Respondent further contended that this Court lacks jurisdiction to entertain the suit, as doing so would amount to usurping the SRC's mandate in determining the fiscal sustainability of remuneration and benefits for public officers.
8. According to the Respondent, under the recognition agreement dated 10th January 2017, clause 3(b) requires the formation of a negotiating committee whenever the parties fail to reach an agreement. In the Respondent's view, such a five-member committee has never been formed to attempt resolution of the dispute.

9. On the other hand, the Claimant has submitted that its members within the Respondent's establishment are not public officers and, therefore, their terms and conditions of service do not fall under the SRC's scrutiny, advice, or approval. In the same vein, the Claimant has further posited that the parties signed a CBA on 14th September 2022, which was not forwarded to the SRC for approval or advice, as the employees concerned are not public officers.
10. The Claimant has further contended that the Court has jurisdiction to hear and determine this matter, noting that it was filed under the Labour Relations Act following failed conciliation efforts, with a referral certificate issued pursuant to Section 69 of the Labour Relations Act.
11. The Claimant has maintained that the SRC circular referenced by the Respondent applies solely to state and public officers, and not to the Respondent's employees, who are not part of the public service.
12. It was the Claimant's further argument that the Respondent's employees are directly employed by the Respondent, and their remuneration is not from the exchequer, consolidated fund, or parliamentary allocations. Accordingly, the Claimant has asserted that the SRC circulars do not apply to co-operative societies.

13. In support of these submissions, the Claimant has relied on the case of ***KUCFAW v Kenya Seed Ltd & Salaries and Remuneration Commission [2024] KEELRC 1007 (KLR)***.

Analysis and Determination

14. The gist of the Respondent's Preliminary Objection is that this Court lacks jurisdiction to hear and determine the present suit before the SRC has provided its input. The Respondent further contends that the Court's jurisdiction has been invoked prematurely, as the mechanisms outlined in circular SRC/AD/CIR/1/13 VOL. IV (28) for resolving a stalemate has not been exploited.

15. It is well settled that a preliminary objection must be founded on a pure point of law. It is also trite that such an objection proceeds on the assumption that all the facts pleaded by the opposing party are correct and cannot be raised where the court must first ascertain any fact. This principle was affirmed in ***Mukisa Biscuits Manufacturing Co. Ltd v. West End Distributors Ltd (1969) EA 696***, where the Court stated as follows:

"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. The improper raising of points by way of Preliminary Objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop.”

Underlined for emphasis

16. Similarly, in the case of *Avtar Singh Bhamra & Another vs Oriental Commercial Bank, Kisumu HCCC No.53 of 2004*, it was held as follows: -

“A Preliminary Objection must stem or germinate from the pleadings filed by the parties and must be based on pure points of law with no facts to be ascertained.”

17. In support of the Objection, the Respondent contends that its employees are public officers. The Claimant, however, holds the contrary view and has consistently maintained that its members employed by the Respondent are not public officers and therefore do not fall under the SRC’s scrutiny, advice, or approval.

18. Given the foregoing divergent positions, the central issue for determination is whether the Respondent’s employees are public officers. This is clearly a

question of fact, which cannot be determined at this stage, but can only be resolved after hearing and evaluating evidence during the trial.

19. For these reasons, the Court finds that the Preliminary Objection does not raise a pure point of law that can be determined at this stage.

20. Accordingly, the Respondent's Preliminary Objection dated 10th December 2025 is overruled, with costs to the Claimant.

DATED, SIGNED and DELIVERED at NYERI this 24th day of March 2026.

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**STELLA RUTTO
JUDGE**

In the presence of:

For the Claimant	Ms. Macharia
For the Respondent	No appearance
Court Assistant	Ndati

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