

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI

ELRC CAUSE NO E646 OF 2024

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

VERSUS

**TONONOKA ROLLING MILLS LIMITED.....
.....RESPONDENT**

RULING

Background

1. The Claimant has instituted this action to seek an order to compel the Respondent to negotiate and sign a Collective Bargaining Agreement (CBA) between the parties. It contends that although the parties have a Recognition Agreement which obligates them to enter into CBA negotiations, the Respondent has been adamant about negotiating and signing the draft CBA which was shared with it in 2022.
2. The Claimant contends that the dispute between the parties was referred to the Ministry of Labour and Social Protection which appointed a conciliator to assist them to resolve the stalemate but no amicable solution was reached. The Claimant thus avers that the Respondent's actions are in breach of the law.

3. The Respondent is opposed to the suit. It contends that the Claimant has not met the simple majority requirement under the applicable law to enable it to be accorded recognition. The Respondent contends that the Recognition Agreement between the parties was signed following a court order which compelled it (the Respondent) to accord the Claimant recognition.
4. The Respondent asserts that the said court order was issued without its (the Respondent's) full participation in the trial. The Respondent avers that its lawyers failed to file a defense to the suit thus depriving the court of information which would have shown that the Claimant was undeserving of the orders since it (the Claimant) had not met the simple majority threshold which the law requires for recognition.
5. The Respondent states that it has nevertheless applied to the National Labour Board to revoke the Recognition Agreement on the grounds that the Claimant lacks a simple majority membership from its (the Respondent's) workforce to entitle it to recognition. It contends that the National Labour Board heard the application on 16th December 2024 but is yet to deliver its decision.
6. The Respondent has filed the application dated 8th May 2025 in which it prays for the following orders:-
 - a) Spent.
 - b) Spent.

- c) That the court issues an order to stay proceedings in the suit pending determination of the revocation proceedings at the National Labour Board.
 - d) That costs of the application to abide the outcome of the suit.
7. The application is supported by the grounds set out on the face thereof and the affidavit dated 8th May 2025. The affiant basically reiterates the averments in the Statement of Defense to anchor the application.
 8. The Claimant has opposed the application. It filed Grounds of Opposition dated 19th July 2025 to anchor its objection to the motion.
 9. The Claimant contends that the Recognition Agreement is meant to enable CBA negotiations between the parties. It contends that the instrument is not meant for any other purpose.
 10. The Claimant contends that the instant application offends article 41 of *the Constitution* on the right to engage in CBA negotiations. Further, it contends that the application offends *International Labour Convention No. 87*.

Analysis

11. The gist of the Respondent's application is that it has already applied to the National Labour Board for revocation of the Recognition Agreement between the parties. It contends that even though the parties signed the impugned agreement, the Claimant did not have the

requisite simple majority of the unionisable employees to entitle it to recognition. The Respondent avers that the impugned recognition was imposed on the parties after its (the Respondent's) advocates failed to file a defense in cause no. 1646 of 2016 resulting in the court treating the matter as undefended and thus issuing the impugned orders.

12. The Respondent contends that although it was unsuccessful in its attempts to set aside the aforesaid court orders, it nevertheless moved the National Labour Board to revoke the Recognition Agreement on the ground that the Claimant did not have a simple majority of the unionisable employees. It avers that the National Labour Board has already heard the request and the parties are awaiting determination of the issue. As such, it (the Respondent) posits that it is only fair that this cause be stayed pending the pronouncement by the National Labour Board.
13. The Respondent's application to revoke the Recognition Agreement between the parties is predicated on section 54 (5) of *the Labour Relations Act* which provides that "an employer, group of employers or employers' association may apply to the Board to terminate or revoke a recognition agreement." As such, the court has no doubt that the Respondent was entitled to make the aforesaid application.

14. The reason for the application, as seen earlier, is the contention that the Claimant does not have a simple majority of the Respondent's unionisable workforce. As such, the Respondent contends that the Claimant was not entitled to the impugned recognition.
15. Section 48 of *the Labour Relations Act* provides as follows regarding recognition of a trade union by an employer:-

“An employer, including an employer in the public sector, shall recognize a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees.”
16. From this provision, it is apparent that a trade union is entitled to recognition only if it has recruited a simple majority of the employer's unionisable employees. Thus, it needs no gainsaying that if this threshold has not been met, the trade union cannot demand to be recognized by the employer.
17. The Respondent's case is that the Claimant had not met this threshold and was therefore not entitled to recognition. However, it avers that the court issued an order which required it to recognize the Claimant. It further avers that the cause in which the order was issued was undefended.
18. Nevertheless, the Respondent avers that it has applied to the National Labour Board to revoke the recognition. As such, it prays for stay of this case pending resolution of the application by the Board.

19. The court does not wish to go into the circumstances under which the recognition order was issued in ELRC Cause no. 1646 of 2016. That order was issued by a court of concurrent jurisdiction and to purport to question it is to purport to sit on appeal on a decision by a court of concurrent jurisdiction, a matter which is impermissible in law.
20. However, the court notes that the law entitles the Respondent to apply to the National Labour Board to revoke the recognition agreement. Indeed, it appears to me that the National Labour Board is the only body which is empowered in law to revoke a Recognition Agreement upon an application in that regard.
21. The foregoing being the position in law, it appears to me that the Respondent was entitled to seek the intervention of the National Labour Board in the dispute relating to the validity of the impugned Recognition Agreement. It is up to the Board to decide on the application.
22. The question which the court ought to determine is whether it should stay these proceedings in order to allow the process before the National Labour Board to be concluded. Put differently, is the Respondent's request in this respect merited?
23. Stay of proceedings is considered as a draconian remedy which should be resorted to sparingly and in the clearest of cases. Speaking to this reality in the case of **Kenya**

Wildlife Service v James Mutembei
[2019] KEHC 10478 (KLR), the court stated as follows:-

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court’s general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue...

....This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.”

24. In **Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000** (unreported), the court expressed itself on the subject as follows:-

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice...the sole question is whether it is in the interest of justice to order a stay of proceedings. And in deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order.”

25. In the case before me, it is apparent that the Respondent has challenged the right of the Claimant to claim recognition before the National Labour Board. It is not clear why the said Board has taken inordinately long to render itself on the dispute. It is however, clear to the court that whatever decision the Board will make will determine the trajectory of the relation between the parties particularly with regard to whether they are entitled to undertake collective bargaining. This being the case, the court is convinced that the Respondent has legitimate grounds to seek stay of proceedings.
26. However, the court is alive to the Claimant's concerns that staying proceedings between the parties will negatively impact on its members' rights to enjoy their right to be represented by a trade union of their choice. In the court's view, the National Labour Board ought to bear these competing interests in mind with a view to expediting its pronouncement on the fate of the Recognition Agreement between the parties. It is unfair to the parties for the said Board to delay resolution of the dispute for more than one year.

Determination

27. Taking the foresaid into account, the court issues the following orders:-

- a) The court issues an order to stay proceedings in the cause but for a period of six (6) months only from the date of this decision.
- b) The National Labour Board should endeavor to determine the fate of the Recognition Agreement between the parties within the window provided above.
- c) Should the said Board not have acted within the aforesaid timelines, the stay of proceedings orders which have been granted herein will stand automatically discharged with the consequence that the Claimant will be at liberty to set the case down for hearing.
- d) Costs of the application shall abide the outcome of the case.

**Dated, signed and delivered on the 19th day of March,
2026**

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Claimant

.....for the Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI