

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE NO. E004 OF 2024

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

VERSUS

**MURANGA WEST WATER &
SANITATION
LIMITED.....RESPONDENT**

COMPANY

**KENYA COUNTY GOVERNMENT
WORKERS UNION.....INTERESTED PARTY**

JUDGMENT

1. The Claimant instituted the present suit by way of a Memorandum of Claim dated 8th February 2024, asserting that it has a recognition agreement with the Respondent, pursuant to which the parties concluded a Collective Bargaining Agreement (CBA) covering the period July 2021 to June 2023. The Claimant avers that upon the CBA’s expiry on 30th June 2023, it forwarded proposals for a new CBA for the period 2023–2025 to the Respondent on 26th July 2023, and requested counterproposals.
2. The Claimant contends that the Respondent failed to furnish the requested counterproposals and instead, by a letter dated 31st July 2023, communicated its intention to revoke the recognition agreement.

3. Following this development, the Claimant reported a trade dispute to the Ministry of Labour and Social Protection. Although conciliation was undertaken, the parties failed to reach an agreement, prompting the Claimant to file the present suit.
4. Against this backdrop, the Claimant seeks an order compelling the Respondent to execute a Collective Bargaining Agreement within 30 days from the date of the judgment.
5. In response to the Claim, the Respondent filed a Memorandum of Response dated 21st June 2024, admitting the existence of the recognition agreement but asserting that its validity is contingent upon the Claimant maintaining a simple majority (50% + 1) of the unionisable workforce, stated to be 59 employees.
6. The Respondent avers that by its letter dated 22nd February 2023, it notified the Claimant that 19 out of 44 members had resigned from the union, thereby reducing its membership below the required threshold.
7. The Respondent further admits that through its letter dated 31st July 2023, it notified the Claimant of its intention to revoke the recognition agreement on account of the union's failure to maintain a simple majority, rendering the operationalisation of a CBA untenable. It contends that the Claimant did not respond to this communication, and the Respondent consequently deemed the position uncontested as at 12th September 2023.

8. The Respondent further states that, by a letter dated 12th September 2023, it formally applied to the National Labour Board, in accordance with the law, seeking revocation of the recognition agreement.
9. It is the Respondent's position that the Claimant has failed to recruit a simple majority of unionisable employees, and therefore its CBA proposals are untenable.
10. The Respondent contends that the recognition agreement was terminable in accordance with its terms and was duly terminated through its letter dated 31st July 2023. It maintains that the agreement is no longer in force and cannot form a basis for compelling negotiations on a CBA. Consequently, the Respondent has urged the Court to dismiss the suit with costs.
11. In its rejoinder, the Claimant maintains that the recognition agreement remains valid and enforceable, as there has been no formal revocation by the National Labour Board.
12. The Claimant further contends that the resignation of some of its members does not, in itself, amount to revocation of the recognition agreement, nor does it justify the Respondent's refusal to engage in CBA negotiations.
13. The Claimant asserts that the Respondent has failed to demonstrate that the recognition agreement has been lawfully revoked, and maintains that there has been no communication from the National Labour Board to that effect.

14. The Claimant also avers that it is unaware of any proceedings before the National Labour Board regarding the alleged revocation.

15. It is the Claimant's position that only the National Labour Board is mandated to revoke a recognition agreement, and therefore, the Respondent has no lawful basis to decline negotiations.

16. By a Ruling delivered on 14th February 2025, the Court allowed an application dated 3rd July 2024 by the Interested Party, thereby enjoining it to the proceedings.

17. Subsequently, the Interested Party filed its Response dated 20th March 2025 to the Statement of Claim.

18. The Interested Party has acknowledged the existence of both the recognition agreement and the CBA between the Claimant and the Respondent, and confirms that the CBA expired on 30th June 2023 without renewal.

19. It contends that the CBA is not renewable as the Claimant no longer has the requisite *locus standi*, having failed to meet the simple majority threshold under **Section 54(1) of the Labour Relations Act**. It further argues that the validity of the recognition agreement is contingent upon compliance with this statutory threshold, which it asserts has not been met.

20.The Interested Party avers that there has been a substantial withdrawal of membership from the Claimant union, reducing its numbers below the statutory requirement.

21.It further asserts that employees who withdrew from the Claimant union have since joined the Interested Party, and that the Respondent has been deducting and remitting union dues in its favour (Interested Party).

22.The Interested Party further states that the Respondent, through its letter dated 12th September 2023, acknowledged the membership withdrawals and sought guidance from the National Labour Board regarding revocation of the recognition agreement to facilitate entry into a new agreement with it (Interested Party).

23.According to the Interested Party, the recognition agreement between the Claimant and the Respondent stood revoked by operation of law, and the Claimant cannot compel enforcement of a CBA founded on an invalid agreement.

24.The Interested Party further avers that out of 56 unionisable employees, it represents 37 members, while the Claimant represents 11, thereby conferring upon it the requisite simple majority and entitlement to recognition.

25.On that basis, the Interested Party submits that the Claimant's suit is devoid of merit and should be dismissed with costs.

26. In response, the Claimant contends that the Interested Party lacks the legal mandate to negotiate with the Respondent in the absence of a valid recognition agreement.
27. The Claimant maintains that its recognition agreement remains valid, adding that it continues to have members whose union dues are being deducted and remitted to it.
28. The Claimant further asserts that the Interested Party is attempting to obtain recognition through improper means, emphasizing that only the National Labour Board is empowered to revoke a recognition agreement.
29. It maintains that it has no dispute with the Interested Party and that the latter should pursue its own recognition agreement independently.
30. The Claimant urges the Court to disregard the Interested Party's response on the basis that it does not raise substantive issues relevant to the dispute herein.
31. By consent of the parties, the matter was determined on the basis of documentary evidence in accordance with **Rule 59 of the Employment and Labour Relations Court (Procedure) Rules, 2024**, with the Court directing the parties to file and exchange written submissions within the prescribed timelines.

Submissions

32. The Claimant submitted that the Respondent neither furnished its counterproposals to it (Claimant) nor to the conciliator, but instead forwarded the same to the Central

Planning and Monitoring Unit, which, in its view, signified the Respondent's readiness to conclude the CBA. The Claimant attributed the delay to the Interested Party, whom it contended has no legitimate stake in the dispute.

33. The Claimant further submitted that its members have not received any salary increment since July 2021, when the last adjustment was effected under the existing CBA.

34. It was the Claimant's further submission that the Respondent demonstrated bad faith and an unwillingness to resolve the dispute by engaging with the Interested Party despite being aware that the recognition agreement remained valid.

35. In the Claimant's view, the issue of the recognition agreement is not in contention, as the same remains valid and binding.

36. On the other hand, the Respondent submitted that the Claimant's membership has fallen below the statutory threshold, and since recognition is contingent upon attaining a simple majority, the Claimant's recognition has consequently lapsed. In support of this position, reliance was placed on the case of ***Kenya Chemical Workers Union v Kenya Plantation & Agricultural Workers Union (2023) KECA 1493 (KLR)***.

37. The Respondent further submitted that the obligation to recognise a union is a dynamic and conditional one, grounded in the democratic choice of employees,

which may change over time. It contended that the decision to revoke recognition was a necessary response to the prevailing realities of employee representation within its workforce.

38. It was the Respondent's position that the Claimant's insistence on continued recognition, despite lacking majority support, contravenes Section 54 of the Labour Relations Act and undermines the principle of industrial democracy, which safeguards employees' freedom to associate, dissociate, and change union affiliation.

39. Citing the decision in *Kenya Tertiary and School Workers Union (KETASWU) v University of Nairobi (2021) eKLR*, the Respondent argued that it would be unjust to compel it to negotiate with a union that no longer commands the support of the majority of its employees, and urged the Court to uphold the revocation of the recognition agreement.

40. The Respondent further submitted that collective bargaining is predicated on valid recognition and that the Claimant's recognition ceased upon its loss of majority membership.

41. Further citing the case of *Kenya Chemical Workers Union v Kenya Plantation & Agricultural Workers Union (supra)*, the Respondent contended that a union cannot lawfully compel collective bargaining in the absence of recognition, as this would undermine the intent of Section 54.

42. On its part, the Interested Party submitted that **Section 57(1) of the Labour Relations Act** is couched in mandatory terms, and that recognition of a trade union by an employer is contingent upon the union attaining a simple majority of the unionisable employees. It further argued that once this threshold is met, the employer is under a mandatory obligation to recognise the union for purposes of collective bargaining. In support of this argument, the Interested Party relied on the case of *Micato Safaris v Kenya Game Hunting & another [2017] eKLR*.

43. The Interested Party further submitted that where a union's membership falls below the statutory threshold prescribed under Section 54 of the Labour Relations Act, any subsisting recognition agreement stands revoked by operation of law. Consequently, such a union cannot compel the employer to honour a CBA founded on that recognition agreement. In this regard, reliance was placed on the case of *Aviation & Allied Workers Union v Air Kenya Express Ltd & another (2013) eKLR and Kenya Union of Road Contractors and Civil Engineering Works v China Road & Bridge Corporation; Kenya Building Construction Timber & Furniture Employees Union (Interested Party) (Cause E117 of 2022) [2023] KEELRC 2135 (KLR)*.

44. Relying on the case of *Kenya Export, Floriculture, Horticulture & Allied Workers Union v Kenya Plantation & Agricultural Workers Union and 4 Others [2021] eKLR*, the Interested Party submitted that recognition agreements are not

irreversible or cast in stone since membership to a trade union may change with time and so does the number of employees in an employer's employ.

45. On that basis, the Interested Party contended that, having lost the support of a simple majority of the Respondent's unionisable employees, the Claimant no longer meets the statutory threshold for recognition and therefore lacks any legal basis to seek orders compelling the Respondent to negotiate and conclude a CBA within 30 days.

46. In its supplementary submissions, the Claimant argued that the requirement of attaining a simple majority applies only at the stage of entering into a recognition agreement. It maintained that, in the present case, the recognition agreement remains valid and subsisting, and therefore, the issue of simple majority is not relevant. In support of this position, the Claimant relied on the case of *Kenya Union of Commercial, Food and Allied Workers v Olivado (EPZ) Limited [2022] KEELRC 13173 (KLR)*.

Analysis and Determination

47. Having considered the pleadings, the documentary evidence on record, and the respective submissions of the parties, the Court finds that the central issue for determination is whether the Respondent ought to be compelled to execute a CBA with the Claimant.

48. It is not in dispute that the Claimant and the Respondent entered into a recognition agreement dated 19th March 2018, pursuant to which they subsequently concluded a CBA covering the period from 1st July 2021 to 30th June 2023.

49. It is further common ground that, by its letter dated 26th July 2023, the Claimant initiated fresh negotiations for a new CBA. In response, the Respondent, through its letter dated 31st July 2023, notified the Claimant that the recognition agreement stood revoked on account of the Claimant's membership having fallen below the requisite threshold of 50% + 1.

50. The Respondent has consistently maintained that the Claimant no longer commands the requisite membership within its workforce to sustain recognition.

51. In support of this position, the Respondent produced 25 resignation letters from its employees indicating their withdrawal from the Claimant's membership.

52. Similarly, the Interested Party tendered evidence in the form of resignation letters from employees who had exited the Claimant union and joined its membership. It also produced Form "S" bearing the names of 37 employees of the Respondent who had subscribed to membership in the Interested Party and authorised the deduction of trade union dues.

53. While the Claimant did not deny that some of its members within the Respondent's workforce had resigned, it maintained that such resignations did not, in themselves,

result in the revocation of the recognition agreement, nor did they justify the Respondent's refusal to engage in collective bargaining.

54. According to the Respondent's letter dated 12th September 2023 addressed to the National Labour Board, out of 56 unionisable employees, 37 were members of the Interested Party, 7 were members of the Claimant, and 12 were non-unionised.

55. **Section 54(1) of the Labour Relations Act** provides that an employer shall recognise a trade union for purposes of collective bargaining if that union represents a simple majority of the unionisable employees.

56. It follows, therefore, that recognition is contingent upon a trade union attaining a simple majority in terms of membership. The determination of such majority is essentially an arithmetical exercise, based on the number of unionisable employees vis-à-vis those who are members of the union at a given time.

57. As earlier stated, there is no dispute that the Claimant attained recognition in 2018, which implies that it had, at that time, achieved the requisite simple majority within the Respondent's workforce.

58. However, the material on record demonstrates that the Claimant's membership has since declined significantly to a level below the statutory threshold prescribed under **Section 54(1) of the Labour Relations Act**.

59. **Section 54(5) of the Labour Relations Act** contemplates such a scenario and provides that where a union's membership falls below the prescribed threshold, the employer may apply to the National Labour Board for termination of the recognition agreement.

60. The record bears that, by its letter dated 31st July 2023, the Respondent notified the Claimant of the decline in its membership below the statutory threshold and indicated that, on that basis, the recognition agreement stood revoked.

61. As observed by the Court of Appeal in the case of ***Micato Safaris v Kenya Game Hunting & another [2017] eKLR***, the issuance of notices of termination of the Recognition Agreement is not the appropriate method for terminating or revoking a Recognition Agreement.

62. Accordingly, the Respondent's position, as conveyed in its letter dated 31st July 2023, to the effect that the recognition agreement with the Claimant stood revoked, is legally untenable.

63. The Court further concurs with the holding in ***Kenya National Union of Teachers (KNUT) v Nancy Njeri Macharia & another [2020] eKLR***, to the effect that it is only the National Labour Board that has the authority to terminate a recognition agreement and that Section 54(5) does not contemplate either party terminating the recognition agreement at their own level.

64. The record further bears that the Respondent, through its letter dated 12th September 2023, applied to the National Labour Board seeking revocation of the recognition agreement with the Claimant.

65. However, there is no evidence before the Court to demonstrate that the National Labour Board has effected the termination of the recognition agreement between the Claimant and the Respondent. In this regard, it is presumed that the revocation proceedings are currently pending before the National Labour Board.

66. In the absence of a decision by the National Labour Board, the recognition agreement between the Claimant and the Respondent remains valid and subsisting, and cannot be deemed revoked either by operation of law or through unilateral action by the Respondent. Its revocation can only occur in accordance with the procedure prescribed under the Labour Relations Act.

67. With that being said and having established that the Claimant has experienced a substantial decline in membership within the Respondent's workforce, the next issue for determination is whether the Court can compel the Respondent to enter into a CBA with the Claimant.

68. My construction of **Section 54(1) of the Labour Relations Act** is that an employer's recognition of a trade union is for purposes of collective bargaining, and is predicated upon the union representing a simple majority of the unionisable

employees. Accordingly, where such majority representation is lost, the statutory basis for continued recognition and collective bargaining is substantially eroded.

69. It follows, therefore, that for a union to compel an employer to engage in collective bargaining, it must demonstrate that it represents a simple majority of the unionisable employees within the employer's establishment.

70. The Court concurs with the holding in *Kenya Chemical Workers Union v Milly Glass Works Limited [2026] KEELRC 526 (KLR)*, wherein it was held as follows:

“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... 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... 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.”

71. It is therefore this Court’s considered view that where a trade union’s membership has fallen below the statutory threshold, a recognition agreement cannot, in such circumstances, provide a valid foundation for collective bargaining between the Claimant and the Respondent, even where it has not been formally revoked.

72. It is also important to appreciate that union membership is inherently fluid and may fluctuate over time due to a range of factors.

73. Accordingly, where it is evident, as in the present case, that a trade union no longer enjoys majority support among unionisable employees, the legal basis for collective bargaining is fundamentally undermined.

74. The total sum of my consideration is that the Claim is disallowed in its entirety with an order that each party shall bear its own costs.

DATED, SIGNED and DELIVERED at NYERI this 17th day of April 2026.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant	No appearance
For the Respondent	Ms. Mutava instructed by Mr. Juma
For the Interested Party	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