

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS AT**  
**KAKAMEGA**  
**CAUSE NO. E020 OF 2025**

**KENYA UNION OF  
PRE-PRIMARY EDUCATION TEACHERS.....CLAIMANT**

**VERSUS**

**VIHIGA COUNTY PUBLIC SERVICE BOARD.....**  
**.....1<sup>ST</sup> RESPONDENT**

**COUNTY SECRETARY,**

**VIHIGA COUNTY GOVERNMENT.....2<sup>ND</sup> RESPONDENT**

**(BEFORE HON. JUSTICE DAVID NDERITU)**

**JUDGMENT**

**I. INTRODUCTION**

1. Through Samuel A. Opiyo, an official of the Claimant and a branch, general secretary, the Claimant commenced this cause by way of a statement of claim dated 12<sup>th</sup> May 2025 seeking for the following reliefs –

- a) THAT a declaration be issued that the Claimant union has met the simple majority and subsequently qualifies to sign Recognition Agreement with the Respondents.***

- b) THAT refusal by Respondents to sign Recognition Agreement with the Claimant is unlawful and violates the Claimant's right to Fair Labour Practices.**
- c) THAT the Respondents are ordered to forthwith sign a recognition agreement with the Claimant union for purposes of collective bargaining.**
- d) THAT costs of this suit be provided for by the respondents.**
2. The statement of claim was accompanied with a verifying affidavit sworn by Samuel A. Opiyo, a list of witnesses, the written statement of Samuel Opiyo, a list of documents and copies of the listed documents attached.
3. The Respondent, through the County Attorney, filed a notice of motion dated 23<sup>rd</sup> September 2025 for leave to reopen the suit and file a response to the claim (the application). The application was accompanied with a Preliminary Objection (PO) of even date, raising the following grounds –
- a) The suit herein offends sections 6 and 7 of the Civil Procedure Act, CAP 21 Laws of Kenya.**
- b) The suit is res sub judice, ELRC E009 of 2024, as it raises the same issues concerning the same parties.**
- c) The suit is bad in law, incompetent and frivolous, and the same ought to be struck out in the first instance.**
4. The Respondent's application was unopposed and the Respondent filed a response to the claim dated 9<sup>th</sup> December 2025.

5. By consent, the claim was canvassed by way of written submissions. The Claimant's representative, Mr Samuel A. Opiyo, filed written submissions dated 7<sup>th</sup> October 2025 on the PO and that of 8<sup>th</sup> January 2026 on the claim, respectively. The Respondents did not file written submissions.

## **II. THE CLAIMANT'S CASE**

6. The Claimant's case is expressed in the statement of claim, the statement by Samuel A. Opiyo, the documentary evidence, and the filed written submissions.
7. The Claimant, a registered trade union representing Early Childhood Development Education (ECDE) teachers, is seeking for recognition by the Respondents.
8. The claimant pleaded that the dispute arose after the matter was referred to conciliation pursuant to a court order of 16<sup>th</sup> April 2024. During conciliation, the Respondents raised a preliminary objection on the basis that no Recognition Agreement existed between the parties. However, the Conciliator, in a report dated 23<sup>rd</sup> May 2024, found that the Claimant had met the threshold for recognition and recommended that the parties execute a Recognition Agreement.
9. Subsequently, the Claimant moved the Court in ***Miscellaneous Application No. E006 of 2024*** seeking adoption of the conciliation report, but the application was dismissed, with the Court directing the Conciliator to issue a certificate of unresolved dispute under

**Section 69(a) of the Labour Relations Act (LRA).** The said certificate was issued on 11<sup>th</sup> March 2025, leading to the present proceedings.

10. The Claimant avers that it has recruited 764 members, with 532 currently reflected in the check-off system, out of a total workforce of not more than 800 ECDE teachers in employ of the Respondents. It is the Claimants' position that it has attained the simple majority required under **Section 54 of the LRA.** The Claimant further contends that the Respondents have failed to remit union dues consistently and have not provided evidence of any valid resignations from union membership.

11. On this basis, the Claimant asserts that it has met the statutory threshold for recognition and that the Respondents' refusal to sign a Recognition Agreement is unlawful and infringes on the right to fair labour practices. The Claimant therefore seeks declaratory orders affirming its entitlement to recognition and an order compelling the Respondents to execute a Recognition Agreement for purposes of collective bargaining.

### **III. THE RESPONDENTS' CASE**

12. The respondents' case is contained in the response to the statement of claim. It is the Respondents' position that the issues raised in the present claim were already canvassed in **ELRC Cause No. E009 of 2024**, that is pending judgment before this Court. The Respondent contends that the instant suit is an abuse of the court

process brought with the intention of defeating justice, particularly as the issue of the absence of a recognition agreement had already been raised as part of the defence in the cause above.

13. The Respondent posits that the Claimant is not entitled to any of the reliefs sought.

#### **IV. SUBMISSIONS**

14. It is submitted on the Claimant's behalf that it has attained the simple majority threshold required under ***Section 54 of the LRA*** and is therefore entitled to recognition by the Respondents for purposes of collective bargaining. The statement contends that despite maintaining membership of over 500 unionisable employees out of approximately 800, and notwithstanding the Conciliator's recommendation that parties execute a recognition agreement, the Respondents have unjustifiably refused to sign the same. The Claimant argues that such refusal is unlawful and infringes on its right to fair labour practices.

15. The Claimant further submits that the present dispute is distinct from that in ***ELRC Cause No. E009 of 2024*** in which judgment was delivered on 26th September 2025. It maintains that the earlier suit concerned the deduction and remittance of union dues, whereas the present claim relates to recognition, hence the two involve different causes of action and reliefs.

16. In opposition to the Respondents' PO, the Claimant argues that the doctrines of *res sub judice* and *res judicata* are inapplicable, as the issues in dispute in the two causes are not substantially the same or similar. It is emphasized that the similarity of parties alone is insufficient to sustain the PO, and that the subject matter and the reliefs sought in the two actions are fundamentally different.
17. The Claimant also contends that the PO does not raise a pure point of law. It is submitted that the PO is as an afterthought intended to delay the proceedings and an abuse of the court process.
18. Accordingly, the Claimant urges the Court to dismiss the PO with costs and allow the substantive claim as prayed.

#### **V. ISSUES FOR DETERMINATION**

19. The court has carefully and dutifully gone through the pleadings filed, documentary evidence tendered from both sides and, the written submissions by the Claimant. The following issues commend themselves to the court for determination –

- a) Whether the PO is merited?***
- b) Whether the Claimant has satisfied the threshold to compel the Respondents to sign a recognition agreement?***
- c) Who should bear the costs of the cause?***

#### **VI. THE PRELIMINARY OBJECTION (PO)**

20. The PO by Respondents is that the present suit is *sub judice* in view of ***ELRC E009 of 2024***, as it raises the same issues between the same parties.

21. The claimant availed the judgment in the above cause wherein the issue for determination was the Respondents' refusal to deduct and remit union dues. The present cause is about refusal by the Respondents to sign a recognition agreement. This subject is materially and fundamentally different from that other. Consequently, the two causes of action, issues in dispute and, the reliefs sought in the two causes are materially and legally different. Moreover, recruitment into a union is a continuous process that changes with time and thus the Claimant's membership could have increased since the previous cause was filed rendering the PO moot.
22. The Respondent did not address the issue beyond the filing of the response. The court finds and holds that the PO by the Respondent's has not merit and the same is hereby dismissed.

## **VII. RECOGNITION**

23. *Section 54 (1) of the LRA* provides as follows in regard to recognition agreements –

***“An employer, including an employer in the public sector, shall recognise a trade Union for purposes of collective bargaining if that trade Union represents the simple majority of Unionisable employees.”***

24. The Respondents did not address the claimant's assertion that it has met the threshold for recognition. The claimant states that out of the 800 ECDE teachers employed by the Respondents the Claimant served upon the Respondents with 764 check-off forms

out of which the Respondents sent bi-product for 532 members. The claimant asserts that the 532 members acknowledged by the Respondents meet the simple majority threshold for recognition.

25. The conciliation report dated 23rd May 2024, which the Claimant largely relied on, indicates that the conciliator found that the Claimant had recruited 766 members out of 800 ECDE teachers and recommended that the Respondent sign a recognition agreement with the Claimant.

26. The Claimant states that the certificate of unresolved dispute dated 11th March 2025 issued by the conciliator, noted that the Claimant had met the simple majority for recognition. The Claimant further stated that it sent to the Respondents a draft recognition agreement under the cover of the letter dated 27th April 2024, for negotiation and signing, but the Respondent refused to sign the same or engage. The court notes that the Respondents, vide a letter of 15th August 2024, through the County Attorney, directed all unions, including the Claimant, to submit their registration documents and check-off forms to aid in finalising the recognition agreements. As it turns out, the Respondent has failed to do the needful in the case of signing a recognition agreement with the Claimant.

27. Even assuming that the Claimant has recruited only about 532 unionisable ECDE teachers employed by the Respondents to its membership out of the 800 ECDE teachers, this number is above

the 51% threshold required under **Section 54 of the LRA** as it stands at about 66.5%.

28. In ***Abyssinia Iron & Steel Limited v Kenya Engineering Workers Union [2016] eKLR*** the Court of appeal held as follows regarding recognition – ***To be recognized as the representative trade Union of the workers of a person or entity, Section 54 of the Labour Relations Act stipulates that the minimum number of workers willing to join the Union must be a simple majority or 51% of the workforce.***

29. The court has considered the report by the conciliator and finds and holds that, whether the claimant has recruited 766 or 532 members, the same is above the simple majority threshold required under **Section 54 of the LRA** for purposes of recognition and signing of an agreement and collective bargaining.

30. The court finds that the suit is merited and allows the same.

### **VIII. ORDERS**

***a) The parties shall negotiate in good faith and conclude and execute a recognition agreement not later than 30th June 2026.***

***b) The costs of the cause to the Claimant.***

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT  
KAKAMEGA THIS 7<sup>TH</sup> DAY OF MAY 2026.**

.....  
**DAVID NDERITU**

# JUDGE