



**Kenya Petroleum Oil Workers Union v Nas Oil Kenya Ltd (Cause E041 of 2024) [2025] KEELRC 107 (KLR) (22 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 107 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE E041 OF 2024  
NZIOKI WA MAKAU, J  
JANUARY 22, 2025**

**BETWEEN**

**KENYA PETROLEUM OIL WORKERS UNION ..... CLAIMANT**

**AND**

**NAS OIL KENYA LTD ..... RESPONDENT**

**JUDGMENT**

1. Through a Memorandum of Claim dated May 13, 2024, the Claimant initiated this action against the Respondent, alleging refusal to enter into a recognition agreement despite a majority of its unionisable staff joining the Claimant. It contended that despite 9 of the Respondent's 14 unionisable employees being its members the Respondent had refused to sign the recognition agreement infringing on the employees' rights to association and fair labour practices. Moreover, the Claimant asserted that despite a trade dispute being reported and a Conciliator being appointed, the Respondent failed to take part in the meetings resulting in the recommendation that the matter be referred to court.
2. In its defense, the Respondent refuted the Claimant's allegations, stating that only 8 out of its 23 employees are members of the Claimant's union, which does not meet the 50% + 1 threshold required under section 54(1) of the *Labour Relations Act*, 2007.
3. Parties agreed to have the matter disposed off by way of written submissions.

**Claimant's Submissions**

4. The Claimant submits that having recruited a simple majority of 50% +1, it qualifies for recognition by the Respondent. The Claimant reiterates the provisions of section 54(1) of the *Labour Relations Act* and points out that the Respondent had not provided any valid reasons for refusing to sign the Recognition Agreement. The Claimant also highlights the Respondent's acknowledgment that 8 of its unionisable employees are members of the Claimant, effectively meaning that the Claimant has achieved 100% membership. The Claimant relies on the case of Kenya National Union of Nurses



v Friends Lugulu Mission Hospital [2021] eKLR, which emphasized the mandatory nature of recognition under section 54(1) of the *Labour Relations Act*, with the only requirement being the recruitment of a simple majority of unionisable employees. Consequently, the Claimant urges the court to allow its case with costs.

### **Respondent's Submissions**

5. The Respondent submits that the figure of 8 out of 18 unionisable employees does not meet the simple majority required under section 54 of the *Labour Relations Act*. Due to this shortfall, the Respondent asserts that it was not obligated to sign the recognition agreement, and therefore, did not infringe upon the constitutional rights of the Claimant's union members. In support of this position, the Respondent cites the case of Union of Veterinary Practitioners Kenya, Taita Taveta Branch v *County Public Service Board & another (Cause E018 of 2022)* [2023] KEELRC 1479 (KLR), where the court affirmed that recognition is contingent on achieving a simple majority, after which the union is entitled to engage in collective bargaining for its members' terms and conditions. It cites the case of Kenya Long Distance Truck Drivers & Allied Workers Union v Ms Kyoga Hauliers Ltd [2013] KEELRC 591 (KLR) in which the court held that for a union to be entitled to a recognition agreement, it must demonstrate compliance with section 54 of the *Labour Relations Act*.
6. The Respondent further submits that the Claimant did not controvert evidence of its refusal to sign the recognition agreement, as outlined in its documents and statement of response. The Respondent relied on the case of Pheoby Aloo Inyanga v Stockwell One Homes Management Limited & another [2022] eKLR, where the court concluded that the Claimant's failure to contest the Respondent's account left the Respondent's case unchallenged.
7. Simply stated, the issue for determination is whether the Claimant has met the threshold for recognition in terms of section 54(1) of the *Labour Relations Act*. This section simply states that 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. It is clear that where a trade union meets the requirement it is to be recognised and proceed to negotiate terms of a collective bargaining agreement.
8. In the case before the Court, 8 out of 23 unionisable employees is under the Claimant. A simple arithmetic reveals that this is 34% of the unionisable employees thus falling below the threshold of 50% + 1 required for the application of section 54(1) of the *Labour Relations Act*. As such, the suit is premised on a false calculation as the numbers do not add up. As such the suit is dismissed albeit with an order that each party bears their own costs.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 22<sup>ND</sup> DAY OF JANUARY 2025**

**NZIOKI WA MAKAU, MCIArb.**

**JUDGE**

