



**Kenya Union of Commercial, Food and Allied Workers v Healthy U (2000) Limited; Kenya Scientific Research International Technical and Allied Institutions Workers Union (Interested Party) (Cause E598 of 2024) [2025] KEELRC 612 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 612 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E598 OF 2024  
AK NZEI, J  
FEBRUARY 28, 2025**

**BETWEEN**

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

**AND**

**HEALTHY U (2000) LIMITED ..... RESPONDENT**

**AND**

**KENYA SCIENTIFIC RESEARCH INTERNATIONAL TECHNICAL AND ALLIED INSTITUTIONS WORKERS UNION ..... INTERESTED PARTY**

**RULING**

1. The suit herein was instituted by the Claimant Union vide a Statement of Claim dated 26<sup>th</sup> July, 2024 and filed herein on 31<sup>st</sup> July, 2024. The Claimant seeks the following reliefs:-
  - a. A declaration that the Claimant has achieved the requisite membership threshold necessary for signing a Recognition Agreement.
  - b. A declaration that the Interested Party is not the right Sector Trade Union and that it has equally lost membership to sustain a Recognition Agreement.
  - c. An order that the invalid Recognition Agreement between the Respondent and the Interested Party is null and void, and stands revoked and/or terminated.
  - d. An order directing the Respondent to Recognize the Claimant within fourteen (14) days of the date of Judgment.



- e. An order directing the Respondent to commence negotiations on terms and conditions within thirty (30) days of the Judgment.
  - f. An order directing the Respondent to remit any outstanding and unremitted union dues from the month of June 2024 to the Claimant from their own funds.
  - g. Any other order deemed just and proper to meet the ends of Justice.
  - h. That costs be awarded to the Claimant in quantified amount as the Claimant acts by self and does not benefit from the Advocates Remuneration Order.
2. The Statement of Claim was filed contemporaneously with an urgent Notice of Motion dated 26<sup>th</sup> July, 2024, whereby the Claimant sought interim and interlocutory orders restraining the Respondent from victimizing any of its employees by reason of their membership to the Claimant union, and compelling the Respondent to deduct and to remit to the Claimant Union dues from the Respondent's employees who have already signed the Claimant's Forms.
  3. The Respondent filed an affidavit in response to the said application on 23<sup>rd</sup> September, 2024, and on the same date filed an evenly dated Notice of Preliminary Objection calling for the Notice of Motion dated 26<sup>th</sup> July, 2024 and the suit herein to be struck off on grounds:-
    - a. That the subject application and the suit violate the provisions of Section 54(6) and 54(7) of the *Labour Relations Act* 2007 which provide that disputes regarding recognition of a Trade Union by an employer as in this suit proceed for conciliation before the National Labour Board, which step the Claimant Union has circumvented.
    - b. That the suit and the instant application are pre-mature, frivolous, vexatious and unmerited, and ought to be dismissed with costs to the Respondent.
  4. On 16<sup>th</sup> December, 2024, I directed that the Preliminary Objection be heard first; and ordered parties to file written submissions on the same. Written submissions have since been filed, with the Interested Party supporting the Preliminary Objection and the Claimant opposing the same.
  5. In the suit herein, the Claimant seeks orders declaring that the Claimant has attained the requisite membership for signing a Recognition Agreement and directing the Respondent to enter into negotiations with the Claimant, and to Recognise the Claimant. The Claimant is also asking this Court to declare an existing Recognition Agreement between the Respondent and the Interested Party as null and void and/or revoked/terminated, as the Interested Party has lost membership in the Respondent Company (employer) to sustain a Recognition Agreement.
  6. It is clear from the Claimant's own pleadings that the Claimant Union's purported cause of action herein arises from the Respondent's refusal to sign a Recognition Agreement with the Claimant, and the Respondent's failure to revoke and/or terminate an existing Recognition Agreement between the Respondent and the Interested Party.
  7. Section 54(6) and (7) of the *Labour Relations Act* provides as follows:-
    - “(6) If there is a dispute as to the right of a trade union to be recognised for the purposes of collective bargaining in accordance with this Section or the cancellation of recognition agreement, the trade union may refer the dispute for conciliation in accordance with the provisions of Part VIII.



- (7) If the dispute referred to in subsection (6) is not settled during conciliation, the trade union may refer the matter to the Industrial Court under a Certificate of Urgency.”
8. The term “Industrial Court” as used in the foregoing statutory provision refers to the forerunner of this Court, and therefore to this Court within the context of the provision.
9. The foregoing statutory provisions are quite clear and unambiguous, and do not require any form of elaboration or interpretation. The Claimant did not refer the dispute herein for conciliation before instituting the present suit. The suit is pre-mature, and therefore incompetent; and cannot be entertained by this Court. The Respondent’s Preliminary Objection, which is purely anchored in law, is well founded. The Court of Appeal’s decision in the case of Mukisa Biscuits Manufacturing Co. Ltd – vs – West End Distributors Ltd [1969] E.A. 696 is called in aid.
10. Having considered written submissions filed on behalf of parties herein, I uphold the Respondent’s Preliminary Objection, and make the following Orders:-
- a. The Claimant’s suit and all applications filed thereon are hereby struck off with no orders as to costs.
  - b. The Claimant may forthwith refer the dispute that informed the filing of the struck-off suit for conciliation, and may file a competent suit in this Court if the dispute is not settled during conciliation.
11. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF FEBRUARY, 2025**

**AGNES KITIKU NZEI**

**JUDGE**

**ORDER**

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

Appearance:

Mr. Muunda for the Claimant

Mr. Mbeche for the Respondent

Mr. Kandere for the Interested Party

