



Kenya Union of Commercial, Food & Allied Workers v Murang’a West Water & Sanitation Company Limited; Kenya County Government Workers Union (Intended Interested Party) (Cause E004 of 2024) [2025] KEELRC 381 (KLR) (14 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 381 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E004 OF 2024
ON MAKAU, J
FEBRUARY 14, 2025**

BETWEEN

KENYA UNION OF COMMERCIAL, FOOD & ALLIED WORKERS CLAIMANT

AND

MURANG’A WEST WATER & SANITATION COMPANY LIMITED RESPONDENT

AND

KENYA COUNTY GOVERNMENT WORKERS UNION INTENDED INTERESTED PARTY

RULING

1. This ruling relates to the Applicant’s Notice of Motion dated 3rd July 2024, brought under section 3 and 12 of the *Employment and Labour Relations Court Act* and Rule 17 of the ELRC Procedure Rules,2016, Order 1 Rule 10 and Order 51 Rule1 of the Civil Procedure Rules,2010 and Article 159(2) of *the Constitution*. It is seeking the following orders that:
 - a. This Honourable Court be pleased to join Kenya County Government Workers Union as an interested party in this suit to enable it to file a substantive response to and submissions on the Claimant’s suit.
 - b. Costs of this application be in the cause.
2. The Application is premised on the grounds on the body of the Motion and the Supporting Affidavit sworn on 3rd July 2024 by Mr. Roba Sharu Duba. In brief, the applicant’s case is that there existed a collective agreement between the Claimant and the Respondent which has since expired; that the



suit seeks to compel the Respondent to enter into another collective bargaining agreement (CBA) with the Claimant; that there has been massive withdrawal of membership from the Claimant to join the Applicant; that there is a reduction in the Claimant's membership below the statutorily required simple majority; that the Respondent has been deducting the union dues of the said members who joined and remitting to the Applicant; and that the Respondent has acknowledged the withdrawal of the membership and sought assistance from National Labour Board towards revocation of the CBA with the Claimant to enable it to sign a new agreement with the Applicant.

3. The Applicant further contends that it now enjoys a simple majority of the Water company employees and therefore it is entitled to enter into the CBA to ensure the employees are represented; that it had negotiated a new CBA in 2023 and it is pending signing by the parties; and that its joinder will facilitate and assist the Court to effectively adjudicate the issues at hand for the expeditious disposal of the matter.
4. The Claimant opposed the motion vide Replying Affidavit sworn by Hellen Njeri Macharia, the Assistant General Secretary, on 23rd July 2024. In brief, she deposed that the suit herein is to compel the respondent to conclude CBA for 2023/2025 after negotiations and conciliations between the Claimant and the Respondent failed to yield a new CBA after the expiry of the earlier CBA in July 2023. She averred that there has been an agreement between the parties, thus the Claimant has the right to negotiate and renew the CBA 2023/2025. She denied that the Applicant has any interest in the suit and averred that the application ought to be expunged from the court file because no leave was sought from the Court before filing the same.
5. She further deposed that section 54(6) of the *Labour Relations Act* (LRA) is clear on the procedure to be followed in case of a dispute in the membership by any union; that without a recognition agreement, the Applicant has no ground of seeking joinder in the suit, as the same is for review of CBA clauses which do not affect the Applicant; and that the Applicant is only causing delay of the conclusion of the matter which is almost in its conclusion as pleadings have already closed and the Central Planning and Project Monitoring Department has filed its report dated 5th July 2024.
6. Finally, she averred that the Applicant ought to invoke section 62 of the LRA and report a dispute through the right mechanism for resolution as per the LRA.

Submissions

7. It was submitted for the applicant that, the decision to allow a party to join proceedings is discretionary and the same should be exercised judiciously. It was further submitted that the applicant has met the threshold for a joinder. For emphasis, reliance was placed on the case of *Civicon Limited vs Kivuwatt Limited and 2 others* [2015] eKLR and the Supreme Court case of *Francis Kariuki Muruatetu and another v Republic & 5 Others* [2016] eKLR.
8. It was submitted that it was not clear under what basis the Claimant seeks to compel the Respondent to enter into a CBA within 30 days whereas it has lost representation of a simple majority. In support, reliance was placed on the case of *Bakery, Confectionery, Food, Manufacturing and Allied Workers Union vs Tropical Heat Limited Cause No. E916 of 2022*.
9. It was further submitted that an application for joinder of a party to proceedings can be made at any stage of the proceedings and that the Claimant had not stated any prejudice to be suffered if the Applicant is joined to the suit. Reliance was placed on the case of *Sammy Kanyi Kareithi v Barclays Bank of Kenya & 2 others: Ross Xavier Whitney (Applicant)* [2021] eKLR to urge that any prejudice suffered can be compensated by costs.



10. It was argued that the Applicant had demonstrated its stake in the proceedings and their outcome and as such it will suffer loss if not joined. Consequently, the Court was urged to allow the application and order joinder of the applicant to the proceedings.
11. The Claimant also filed submissions which basically reiterated the contents of its affidavit. Consequently, I will not reproduce the same herein.

Determination

12. Having considered the application, the response and the rival submissions, the issue that arises is whether the Applicant meets the threshold for joinder in this matter.
13. The Applicant has heavily relied on section 54 of the LRA in arguing that the Claimant lacks the right to enter into a recognition agreement with the Respondent as it does not possess a simple majority of membership of the Respondent's employees. The section provides as follows:

“ 54.

- (1) 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.
- (2) A group of employers, or an employers' organization, including an organization of employers in the public sector, shall recognize a trade union for the purposes of collective bargaining if the trade union represents a simple majority of unionisable employees employed by the group of employers or the employers who are members of the employers' organization within a sector.
- (3) An employer, a group of employers or an employer's organisation referred to in subsection (2) and a trade union shall conclude a written recognition agreement recording the terms upon which the employer or employers' organisation recognizes a trade union.
- (4) The Minister may, after consultation with the Board, publish a model recognition agreement.
- (5) An employer, group of employers or employers' association may apply to the Board to terminate or revoke a recognition agreement.
- (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) When determining a dispute under this section, the Industrial Court shall take into account the sector in which the employer operates and the model recognition agreement published by the Minister.” [emphasis added]

14. A simple reading of the above section clearly indicates that an employer or group of employers in a sector have no obligation to engage any trade union for purposes of collective agreements unless that trade union has recruited a simple majority of the unionisable staff of the employer. The employer herein has alleged that, the applicant and not the claimant, represents a simple majority of its unionisable workforce. Although the claimant denies that allegation, there is evidence of mass withdrawal of membership from the claimant to join the applicant. Annexure RSD- 4 is Pay Roll indicating that the claimant has 11 members while the applicant has 34 members in the respondent’s unionisable staff.
15. I have also seen RSD -5, letter by the respondent to the Chairman of the National Labour Board seeking revocation of the Recognition Agreement with the claimant for the reason that the claimant had lost the required threshold of simple majority required for recognition. The letter indicated that the applicant now enjoyed the simple majority of membership as opposed to the claimant.
16. Under Order 1 Rule 10(2) of the Civil Procedure Rules, a party is only to be joined in a suit if such joinder is necessary so as to enable the Court to effectively determine the suit. I believe that the applicant is a necessary party to the proceedings before me since it is the correct union to negotiate terms of service on behalf of the staff of the respondent by dint of section 54 (1) and (2) of the *Labour Relations Act*. The dispute herein cannot be effectively resolved without the applicant who has the legal mandate from the majority of the unionisable staff to represent them.
17. In view of the foregoing matters, I find that the application has merits and it is allowed as prayed. Costs in the cause.

DATED, SIGNED AND DELIVERED AT NYERI THIS 14TH DAY OF FEBRUARY, 2025.

ONESMUS N MAKAU

JUDGE

ORDER

This ruling has been delivered to the parties via Teams video conferencing with their consent, 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.

ONESMUS N MAKAU

JUDGE

