



**Kenya Engineering Workers Union v Auto Springs Engineering Workers E.A Limited
(Cause E644 of 2023) [2025] KEELRC 1011 (KLR) (28 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1011 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E644 OF 2023
SC RUTTO, J
MARCH 28, 2025**

**BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
AUTO SPRINGS ENGINEERING WORKERS E.A LIMITED RESPONDENT**

JUDGMENT

1. The Claimant has described itself as a registered trade union within the meaning of the *Labour Relations Act*. It is the Claimant's case that the Respondent's core business falls within its jurisdiction area of representation being an engineering company as per its registered constitution. The gist of the Claimant's case is that the Respondent is in breach of Section 54 of the *Labour Relations Act* for refusal to sign and accord it recognition. According to the Claimant, it has met all the requirements meant for recognition. It is on the foregoing basis that the Claimant has sought the following reliefs against the Respondent:
 - a. That, the Honourable Court be pleased to Order the Respondent to accord the Claimant Recognition Agreement by signing the same within a specific time frame to pave way for CBA negotiations.
 - b. That, the Honourable Court be pleased to issue an Order against the Respondent and or her agents from victimizing the Claimant members on ground of trade union activities/affiliation.
 - c. That, the cost of this suit be met by the Respondent.
 - d. That any other Relief the Honourable court may deem fit to grant.
2. Opposing the Claim, the Respondent has contended that the Claimant has not produced any documentation in support of its assertion that it is a duly registered trade union. That as such, it is



unable to establish whether the Claimant is a registered trade union and whether it is in the same line of trade as the Respondent.

3. The Respondent has further denied the Claimant's assertions that its core business falls within the Claimant's jurisdiction.
4. The Respondent has further averred that the Claimant has never maintained a simple majority of its unionisable employees in order to be recognized. According to the Respondent, the Claimant is not entitled to any of the reliefs sought. Consequently, the Respondent has asked the Court to dismiss the Claim with costs.
5. The matter proceeded for hearing on 25th November 2024 and 9th December 2024, during which both parties called oral evidence.

Claimant's Case

6. The Claimant called oral evidence through Mr. Joabson Okaya who testified as CW1. Mr. Okaya identified himself as the Deputy Secretary General of the Claimant Union. He adopted his witness statement and the list and bundle of documents filed on behalf of the Claimant to constitute his evidence in chief.
7. Mr. Okaya stated that during the recruitment of the Respondent's employees into the Claimant Union, he was the Area Secretary, Nairobi region and that his duties included recruitment of new members.
8. He further averred that in the years 2022 and 2023, the Claimant recruited 81 out of 157 unionisable employees of the Respondent into her membership which translates to 52%.
9. Mr. Okaya averred that the check-off forms and a Recognition Agreement were subsequently forwarded to the Respondent, who deducted and remitted trade union dues but declined to sign the Recognition Agreement.
10. That the refusal by the Respondent to sign the Recognition Agreement prompted the Claimant to report a trade dispute to the Ministry of Labour and Social Protection.
11. It was Mr. Okaya's testimony that when the trade dispute was ongoing, the Respondent terminated most of its employees who had joined the Claimant Union so that the Union remains with less than the mandatory 51% simple majority.
12. In Mr. Okaya's view, there is no withdrawal from the Union membership as there are no letters written to the Respondent to warrant the stoppage of Union dues or refusal to sign the Recognition Agreement.

Respondent's Case

13. The Respondent called oral evidence through Ms. Fancy Cherono, who testified as RW1. Ms. Cherono, who identified herself as the Respondent's Human Resource Manager, started by adopting her witness statement to constitute her evidence in chief. She further produced the documents filed on behalf of the Respondent as exhibits before Court.
14. Ms. Cherono averred that on or about November 2022, the Respondent received a letter from the Claimant dated 21st November 2022 that they had recruited 40 employees from the Respondent and that they had signed various check-off forms authorizing the Respondent to deduct trade union dues and remit to the Claimant and COTU Kenya.



15. That through an email communication on 29th November 2022, the Respondent responded to the Claimant's letter, pointing out various anomalies and concerns.
16. Ms. Cherono averred that in the Check-off forms dated 5th August 2022, the following anomalies were raised:
 - i. a former employee by the name Brian Ndungu passed away in January 2022, yet was included in the check-off form that was shared by the Claimant.
 - ii. a former employee by the name Mwanzia Kitheka whose employment ended through termination in June 2022, had signed the check-off form on 5th August 2022, a date after his exit from the employ of the Respondent.
 - iii. the check-off forms also showed a former employee by the name Eric Atigala who had left employment in April 2022, had signed the check-off form on 5th August 2022, a date after his exit from the employ of the Respondent.
17. That from the check-off forms dated 4th October 2022, the following anomalies were identified:
 - i. Jeremiah Orege was indicated as having signed the check-off form on 4th October 2022, yet he had left employment in April 2022.
 - ii. The names of David Katana Kazungu, Makau Kithikii, Joshua Kithuka Mackenzi and Francis Mwangangi were duplicated.
18. Ms. Cherono further averred that the Respondent received a letter dated 13th February 2023 from the Claimant requesting to have a general workers' meeting within the Respondent's premises and allow the employees to elect their officials.
19. Through a letter dated 15th February 2023, the Respondent advised the Claimant that they could not grant permission to hold the said meeting as the same could only be granted upon signing of a recognition agreement as per Section 54 of the [Labour Relations Act](#).
20. That through a letter dated 18th February 2023, the Claimant forwarded an undated Recognition Agreement to the Respondent for signature.
21. The Respondent advised the Claimant that the recognition could not be signed as the Claimant had not adhered to Sections 54, 55 and 56 of the [Labour Relations Act](#) and that the current membership was at 57 employees.
22. It was Ms. Cherono's evidence that due to the various anomalies that were identified in the Claimant's documentation, the Human Resource Office started counter-checking with the employees on the accuracy of the information received from the Claimant before any settlement of the check-off forms could be done.
23. The said process was done in the presence of Jackson Matheka, the staff council chairman and Rebecca Kivinda, the HR Manager at the time, therefore, ensuring the process was transparent and there was no coercion.
24. That during the said process, some of the employees claimed that their signatures had been forged and decided to "resign" from the Claimant. Ms. Cherono added that the employees resigned voluntarily through resignation letters and the same were promptly shared with the Claimant.
25. Due to the claims of fraudulently acquiring the employees' signatures, the matter was reported to Tigoni Police Station under OB Number 22/25/05/2023 and is still under investigation.



26. Ms. Cherono averred that the employees claimed that they had a meeting with the Claimant's officials in a nearby restaurant on 19th March 2023, where each employee received Kshs 1,000.00 as sitting allowance and signed a document that they had no knowledge of.
27. That on 21st March 2023, the Claimant wrote to the Respondent requesting for a joint meeting for the signing of the Recognition Agreement on grounds that the Claimant had reached a simple majority.
28. On 25th March 2023, the Claimant wrote to the Respondent alleging victimization of employees who were members of the Claimant. The Respondent denied these allegations vide a letter dated 29th March 2023.
29. Through a letter dated 30th March 2023, the Claimant wrote to the Ministry of Labour and Social Protection, reporting the existence of a trade dispute. Subsequently, a conciliator was appointed and through a letter dated 24th May 2023, the conciliator invited the parties to a joint conciliation meeting.
30. Both parties made oral and written submissions during the conciliation meeting and the same was captured in the conciliator's report. A final determination of the dispute was made by the conciliator, and a report dated 28th July 2023 was issued.
31. Being dissatisfied, the Claimant filed the Memorandum of Claim herein.
32. Ms. Cherono was categorical that as per the employee records in the Respondent's possession, a simple majority has never been achieved by the Claimant.
33. It was Ms. Cherono's assertion that from the check-off forms, the maximum number of unionisable employees recorded is 20. Therefore, the Claimant has no factual basis to allege that a simple majority was attained.
34. She is advised by her advocates that the Claimant needs to fulfill the requirements provided for in Section 54 of the *Labour Relations Act*.
35. Ms. Cherono further averred that the allegations of victimization are a desperate attempt by the Claimant to paint the Respondent in a bad image. It was her contention that the said allegation only came about when the Respondent spotted glaring errors and misinformation in the check-off forms that were being submitted by the Claimant.
36. She maintained that the Respondent has always and continues to promote fair labour practices and promotion of constitutional rights on freedom of association.

Submissions

37. The Claimant submitted that the conciliator's report is not in line with Section 68 of the *Labour Relations Act* hence not binding. To this end, the Claimant urged the Court not to consider the said report.
38. It was further submitted by the Claimant that there was no evidence of the alleged forged signatures or proof as to who filed the alleged complaint with the police.
39. The Claimant further submitted that its prayer for recognition is merited as she has met the three legal requirements.
40. In the same vein, the Claimant posited that it had met 51% simple Majority before forwarding the Recognition Agreement to the Respondent.



41. With respect to the claim that some employees had left the Respondent's employment, the Claimant contended that there was no proof to that effect.
42. On its part, the Respondent submitted that it conducted an internal audit of the purported membership signatures submitted by the Claimant and established that they contain serious irregularities, including; Repeated names and signatures appearing multiple times on the list; Signatures of individuals who are no longer employees of the company; Forged or fictitious signatures belonging to persons who have never been employees; and Employees who claim that they never consented to joining the Respondent trade union.
43. It was the Respondent's further position that the Claimant has approached this court with unclean hands by engaging in fraudulent means to fabricate support for its recognition. Placing reliance on the case of Republic v Kenya Revenue Authority ex parte Aberdare Freight Services Limited (2004) eKLR, the Respondent urged the Court to decline to grant any relief to the Claimant and dismiss its claims with costs.
44. The Respondent stated in further submission that it does not fall under the purview of the Claimant as shown in its Memorandum and Articles of Association. Referencing the case of Fondo Kalama & 19 Others v Anderson M Mtalaki & 3 Others [2013] eKLR, the Respondent submitted that there is a limitation in law as to who can join a union.

Analysis and Determination

45. Flowing from the record, it is evident that the Court is being called to determine the following issues:
 - a. Whether there is proof that the Claimant Union has attained the threshold for recognition by the Respondent under Section 54(1) of the *Labour Relations Act*;
 - b. Whether the Claimant is entitled to the reliefs sought.Whether there is proof that the Claimant Union has attained the threshold for Recognition by the Respondent
46. The crux of the Claimant's case is that in 2022 and 2023, it recruited 81 out of 157 of the Respondent's unionisable employees translating to 52%. It is on this basis that the Claimant maintains that it has met the statutory requirements for recognition by the Respondent.
47. The Respondent has countered the Claimant's position and contends that the Claimant has never reached a simple majority and has no factual basis to allege that a simple majority was attained.
48. In support of its case, the Claimant exhibited copies of check-off forms bearing a total of 82 names. From the Claimant's standpoint, the names and the accompanying signatures represent the employees of the Respondent who had declared their membership in the Union. From the record, the said check-off forms were forwarded to the Respondent for purposes of deduction and remittance of trade union dues.
49. It is evident that the dispute herein is not with respect to the deduction and remittance of trade union dues but rather the recognition of the Claimant Union within the meaning of Section 54(1) of the *Labour Relations Act*.
50. The Respondent has averred that the check-off forms forwarded by the Claimant contained anomalies. With respect to the check-off forms dated 5th August 2022, the Respondent has averred that an employee (Brian Ndungu) was deceased while two other employees (Mwanzia Kitheka and Eric



- Atigala), had left employment by the time it is alleged they signed the check-off forms on 5th August 2022.
51. Further anomalies were detected in the check-off forms dated 4th October 2022, in that an employee (Jeremiah Orange) had signed the check-off form in April 2022 yet he had left employment on 4th October 2022, while the name of David Katana Kazungu, Maku Kithiki, Joshua Kithuka Makenzi and Francis Mwangangi were duplicated.
 52. The Respondent has further averred that due to the anomalies, it undertook a verification exercise following which some employees claimed that their signatures had been forged and decided to “resign” from the Union. To reinforce this position, the Respondent exhibited copies of resignation letters from 23 employees in which they indicated their resignation from the Claimant Union.
 53. In as much as the Claimant Union has submitted that the withdrawal from the union was not procedural, CW1 admitted during cross-examination that the Union came across the resignation letters.
 54. Section 54(1) of the *Labour Relations Act* provides as follows:

54(1) 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.
 55. A clear reading of Section 54 (1) of the *Labour Relations Act* reveals that recognition is earned by a trade union attaining the simple majority in terms of membership.
 56. Therefore, the computation of a simple majority at a particular point in time is an arithmetical calculation based on the total number of unionisable employees against the total number of unionisable employees recruited by the Union.
 57. At the outset, it is noteworthy that the Respondent did not adduce evidence to prove the number of unionisable employees in its workforce. According to the Claimant, the Unionisable employees in the Respondent’s workforce were 157 at the material time.
 58. From the record, the Claimant initiated the request for recognition through its letter dated 18th February 2023 and, to this end, forwarded a copy of the draft recognition agreement for consideration by the Respondent.
 59. According to the Respondent’s Response and the testimony of RW1, the number of unionisable employees in the Respondent’s workforce as of February 2023 was 160 employees, while the union members recruited into the Claimant’s membership were 59.
 60. The check-off forms exhibited by the Claimant relate to 82 employees. It is evident from the record that this number had come down bearing in mind that 23 employees had resigned from the union, while 4 employees were no longer in the Respondent’s employment for one reason or the other.
 61. In light of the foregoing, it becomes apparent that at the time the Claimant Union sought recognition on 18th February 2023, it had recruited into its membership 55 employees of the Respondent against a unionisable workforce of 160. Basic arithmetic translates this number to 34% of the Respondent’s unionisable employees.
 62. Therefore, it follows that at the time, the Claimant had not attained the legal threshold of simple majority to warrant recognition by the Respondent.



63. To this end, the Claimant's claim that it had attained a simple majority as set out in Section 54 (1) of the Labour Relations Act to warrant recognition by the Respondent cannot be sustained.

Orders

64. It is against this background that the Court dismisses the Claim with an order that each party shall bear its own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF MARCH 2025.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Mr. Makale

For the Respondent Mr. Okeyo

Court assistant Millicent

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

