



REPUBLIC OF KENYA



KENYA LAW
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**Banking, Insurance & Finance Union (Kenya) v Citi Bank, N. A (Cause
169 of 2017) [2025] KEELRC 682 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 682 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 169 OF 2017
L NDOLO, J
MARCH 6, 2025**

BETWEEN
BANKING, INSURANCE & FINANCE UNION (KENYA) CLAIMANT
AND
CITI BANK, N. A RESPONDENT

RULING

1. By an interim judgment dated 28th July 2022, I directed the Labour Commissioner to appoint a Labour Officer to conduct an onsite job analysis, within the Respondent's establishment.
2. In the same judgment, I directed the Respondent to facilitate the job analysis, by allowing the designated Labour Officer access to the work place and availing all employment records, including but not limited to employment contracts and job descriptions.
3. Following the filing of a report on the onsite job analysis dated 31st October 2024, the Respondent moved the Court by way of Notice of Motion dated 18th December 2024, seeking orders to re-open the matter, with leave to adduce additional evidence being, the Respondent's internal policy on its corporate grading structure, arising from the findings in the onsite job analysis report dated 31st October 2024, and any attendant testimony.
4. In the alternative, the Respondent asks the Court to allow the parties to file witness affidavits on their representations relating to the findings in the onsite job analysis report dated 31st October 2024, as well as supplementary written submissions.
5. The application is supported by an affidavit sworn by the Respondent's Head of Human Resources, Deris Mogoi, and is premised on the following grounds:
 - a. The suit was filed by the Claimant Union, against the Respondent, with the Claimant claiming that the Respondent has failed to deduct and remit agency fees for its unionisable staff;



- b. The matter first came for hearing on 2nd February 2022, on which date the Claimant's witness, Isaiah Munoru Mucheke testified in part but was eventually stood down, when the Court noted that the case was one that relied heavily on documentary evidence;
- c. Upon the Claimant's witness being stood down, the Court directed the Respondent to supply documents showing its establishment structure and brief job descriptions for each level, within 14 days of that date, and thereafter the parties were to file written submissions on the matter;
- d. The orders issued on 2nd February 2022, were fully complied with and the Court reserved a judgment for 28th July 2022;
- e. When the matter came up for delivery of judgment on 28th July 2022, the Court informed the parties that it had read their written submissions and noted that there were differing views between the Claimant and the Respondent on whether there were any unionisable employees in the Respondent's employment and as such, an onsite job analysis was necessary. The Court directed the Labour Commissioner to designate a Labour Officer to conduct the job analysis;
- f. The onsite job analysis was conducted on 23rd May 2024 and 10th July 2024, by Albert Sakwa who submitted a report dated 31st October 2024, with the following findings:
 - i. The main duties of employees in Job Groups C04, C05 and C09 correspond to duties of employees listed in the Preamble of the CBA as Check Clerks, Clerical Staff, Clerical Assistants and Copy Typists. These employees are therefore unionisable. These three job groups have a total of 34 employees as per the staff establishment provided;
 - ii. The duties of employees in Job Group C10 correspond to duties of employees listed in the Preamble of the CBA as Section Heads (Supervisors). These employees are therefore also unionisable. This job group has a total of 29 employees as per the staff establishment provided;
 - iii. The duties of some employees in Job Group C11 make them unionisable as they fall in the category of either Section Heads or Check Clerks or Technical Staff. Employees who work as Treasury and Trade Solutions Program Analyst 1 (3 employees), Infrastructure Intermediate Technology Analyst (1 employee), CSIS Intermediate Security Officer (1 employee), Credit Maintenance Intermediate Analyst (2 employees) and Corporate Salesperson (1 employee) are unionisable employees.
 - iv. Having studied the entire report and the findings of the Labour Officer, the Respondent is of the considered view that it is in the interest of justice that the suit be re-opened to enable it produce and/or otherwise explain its corporate grading structure for the benefit of the Court and to also allow parties to give viva voce evidence on the report and/or submit on it before the Court renders its decision on the matter;
 - v. The need for re-opening of the matter for purposes of adducing additional evidence and taking of testimonies and supplementary written submissions is informed by the fact that the Respondent's purely corporate banking business model is different and unique from the rest of commercial banks in Kenya, which are predominantly consumer/retail banks, which fact was not taken into account at the time the Labour Officer prepared his report;
 - vi. Due to the predominantly unique purely corporate banking business model, the Respondent's staff therefore perform multiple complex functions that do not



necessarily involve in-country processes but also processes involving multiple countries across Sub-Saharan Africa;

- vii. The Respondent's internal grading structure also needs to be highlighted and clearly explained to the Court; for example, Job Grade C09 and above are considered management grades at the Respondent Bank and such as, those cadres of employees are automatically not unionisable;
 - viii. The Claimant does not stand to suffer any prejudice if the orders sought in the application are granted as they will be accorded an opportunity to give evidence in response to the additional evidence adduced by the Respondent and/or cross examine the Respondent's witness on the additional evidence adduced;
 - ix. The Respondent on the other hand, stands to suffer great and grave prejudice if the additional evidence is not admitted as its right to a fair hearing will have been hindered.
6. The Claimant opposes the application by a replying affidavit sworn by its Legal Officer, Judith Kubai on 4th February 2025.
 7. Kubai terms the application as a time-buying gimmick, intended to infuse confusion into the case and exhaust the parties and the Court. She states that the Respondent had the opportunity to provide all its evidence during the onsite job analysis and it is therefore too late in the day to ask for a second chance to do so.
 8. The Respondent supports the findings contained in the job analysis report and asks the Court to adopt it.
 9. By its application, the Respondent seeks an opportunity to adduce additional evidence, pursuant to a court mandated job analysis.
 10. In its submissions in support of the application, the Respondent referred to the decision in *Raindrops Limited v County Government of Kilifi* [2020] eKLR where the principles to be considered in an application for admission of additional evidence were stated as follows:
 - a. First the jurisdiction is a discretionary one and is to be exercised judiciously. In exercising that discretion, the Court is duty-bound to ensure that the proposed re-opening of a party's case does not embarrass or prejudice the opposite party;
 - b. Secondly, where the proposed re-opening is intended to fill gaps in the evidence of the applicant, the Court will not grant the plea;
 - c. Thirdly, the plea for re-opening of a case will be rejected if there is inordinate and unexplained delay on the part of the applicant;
 - d. Fourthly, the applicant is required to demonstrate that the evidence he seeks to introduce could not have been obtained with reasonable diligence at the time of hearing of his case and the evidence must be such that, if admitted, it would probably have an important influence on the result of the case, though it need not be decisive;
 - e. Lastly, the evidence must be apparently credible, though it need not be incontrovertible.
 11. The present case is somewhat unique because the Respondent's plea for re-opening of the case with leave to adduce further evidence was informed by the outcome of a job analysis ordered by the Court suo moto. It is reasonable to conclude that at the time the parties subjected themselves to



the jurisdiction of the Court, they did not anticipate the unique route taken by the Court towards adjudication of the dispute. Indeed, it is not commonplace for a court to order a job analysis.

12. With this in mind, the Respondent cannot be faulted for failing to avail the evidence it now wishes to adduce. In addition, the averment made by the Respondent that it operates a unique business model is a matter that merits further interrogation by the Court, and this can only be achieved through adduction of further evidence.
13. The Respondent's application dated 1 December 8, 2024 is therefore allowed. The case is consequently re-opened, with leave to the parties to file witness statements and supporting documents on the specific issue of the Respondent's business model and job grading structure, within the next 28 days from the date of this ruling.
14. The costs of the application will be in the cause.
15. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 6TH DAY MARCH 2025

LINNET NDOLO

JUDGE

Appearance:

Mr. Odero for the Claimant

Miss Kavagi for the Respondent

