



**Kenya Union of Sugar Plantation and Allied Workers v Vihiga County Public Service Board & another; Salaries and Remuneration Commission (Interested Party) (Miscellaneous Case E006 of 2024) [2025] KEELRC 733 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 733 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA  
MISCELLANEOUS CASE E006 OF 2024  
DN NDERITU, J  
MARCH 6, 2025**

**BETWEEN**

**KENYA UNION OF SUGAR PLANTATION AND ALLIED WORKERS ..... APPLICANT**

**AND**

**VIHIGA COUNTY PUBLIC SERVICE BOARD ..... 1<sup>ST</sup> RESPONDENT  
COUNTY SECRETARY, VIHIGA COUNTY GOVERNMENT .... 2<sup>ND</sup> RESPONDENT**

**AND**

**SALARIES AND REMUNERATION COMMISSION ..... INTERESTED PARTY**

**RULING**

**I. Introduction**

1. In a notice of motion dated 24<sup>th</sup> October, 2024 (the application) the claimant/applicant is seeking orders that –
  - i. Spent
  - ii. That this honourable court be pleased to adopt the conciliation report dated 23<sup>rd</sup> May, 2024 and enforce the recommendations therein as judgement of court in the terms that the employer to sign a recognition agreement with the applicant forthwith.
  - iii. That costs be provided for by the respondents.
2. The application is expressed to be premised on Rule 69 of the Employment and Labour Relations Court (Procedure)Rules, 2024 (ELRC Rules). It is based on the grounds on the face of it and is



supported with the affidavit sworn by Samuel A. Opiyo, the secretary general of the claimant, on even date with several annexures thereto.

3. In opposition to the application, the respondents filed a preliminary objection (PO) dated 5<sup>th</sup> November, 2024.
4. By consent, the court directed that both the application and PO be canvassed by way of written submissions.
5. The claimant's representative, Mr. Opiyo, filed written submissions on 19<sup>th</sup> December, 2024. The respondent's counsel, Ms. Shijenje, filed on even date.

## II. Evidence

6. In the supporting affidavit it is deposed that by a court order issued on 16<sup>th</sup> April, 2024 (A1) the court directed that all issues relating to the applicant's locus and incidental issues be handled through conciliation.
7. It is deposed that during the conciliation the respondents demanded the resubmission of the check-off forms for the 764 recruited union members and the applicant submitted the same to the Vihiga County's chief officer responsible for education who acknowledged receipt by stamping on the forwarding letter (A2).
8. The applicant vide letter dated 27<sup>th</sup> April, 2024 requested the chief officer of education to sign the recognition agreement as the applicant had met the simple majority threshold.
9. It is deposed that during the conciliation process, the respondents had raised the issue of a recognition agreement as an item for discussion, and the conciliator upon finding that the applicant had satisfied the simple majority threshold, recommended for the parties to sign a recognition agreement in the report dated 23<sup>rd</sup> May, 2024 (A4).
10. It is deposed that the respondents are hell-bent on punishing the union for no reason on the issue of a recognition agreement despite asking the applicant to submit all relevant documents.
11. It is further deposed that the issue of the applicant's locus was determined in a ruling dated 20<sup>th</sup> September, 2024 (A6), and the applicant having recruited over 500 out of the 800 ECDE teachers met the simple majority required for signing a recognition agreement.
12. In the PO, the respondents opposed the application on the grounds that –
  - a. The application offends Sections 67, 68, and 69 of the *Labour Relations Act* (2007) and Rule 69 of the Employment and Labour Relations Court (Procedure) Rules, 2024.
  - b. There is no existing conciliation agreement signed by both parties for adopting as judgment of this court.
  - c. The application is frivolous and bad in law.

## III. Submissions

13. Mr. Opiyo, the applicant's representative, submitted on two issues –



**Whether the applicant meets the simple majority threshold required for signing a recognition agreement; and, Whether the instant application is merited.**

14. It is submitted that pursuant to Section 54(7) of *Labour Relations Act* where a dispute referred to conciliation is not settled a trade union may refer the matter to court under a certificate of urgency. It is submitted that pursuant to Rule 69(1) of the Employment and Labour Relations Court (Procedure) Rules, in the event parties enter into the conciliation agreement a party may file the same in court for adoption.
15. On the first issue, it is submitted that the applicant has met the requirement threshold for signing a recognition agreement as evidenced by service of 764 check-off forms of the 764 members of the applicant out of the 800 ECDE employees in the service of Vihiga County (the county).
16. It is submitted that all check-off forms have since been produced in Kakamega check-off ELRC Cause No. E009 of 2024 and the conciliator in a report dated 23<sup>rd</sup> May, 2024 confirmed that the applicant had met the threshold for signing a recognition agreement with the County.
17. It is further submitted that the court in its ruling (Keli J.) confirmed that the applicant had submitted over 500 check-off forms out of 800 members a fact that has not been challenged by the respondent or appealed.
18. Relying on the decisions in *Kenya Union of Commercial Food & Allied Workers v Sai Electrical & Hardware (Cause E031 of 2022)* and *Kenya Plantation & Agricultural Workers Union v Solio Ranch Limited (cause No.7A of 2019)*, it is submitted that the applicant has satisfied the requirements for signing of a recognition agreement. It is further submitted that the respondent has failed to rebut that indeed the list of employees produced by the applicant are its employees.
19. It is submitted that the applicant served the County with a draft recognition agreement and their certificate of registration on 27<sup>th</sup> April, 2024 but no response has been received from the 1<sup>st</sup> and 2<sup>nd</sup> respondents. The court is urged to find that the refusal to act by the respondents and the County amounts to unfair labour practice.
20. The respondent's counsel submitted on two issues –

**Whether there is a conciliation agreement for adoption by the court; and, Who is to pay costs.**

21. On the first issue, it is submitted that while Article 159(2) of *the Constitution* encourages dispute resolution through alternative dispute resolution (ADR) mechanisms, where there is a laid down procedure by a statute, the provided procedure must be followed.
22. It is submitted that the *Labour Relations Act* provides for conciliation that is voluntary ADR and a decision therefrom must be agreed upon by all the concerned parties. It is submitted that where a dispute is unresolved after ADR, the same should be referred back to court for hearing and determination.
23. It is submitted that Rule 69 of the Employment and Labour Relations Court (Procedure) Rules provides for the adoption of a conciliation, negotiation, or mediation agreement by the court where parties reach a consensus under Sections 67 and 68 of the *Labour Relations Act*.
24. It is further submitted that where parties reach a settlement in conciliation, the parties must sign the agreement together alongside the conciliator. It is submitted that the conciliation report presented in court is not signed by either party, and further that the same only contains the submissions by the conciliator.



25. It is submitted that during the conciliation process, parties may either resolve a dispute or fail to resolve the dispute. Where they agree and settle the dispute the parties sign a conciliation agreement. It is further argued that where parties fail to agree, the dispute is deemed unresolved and referred back to court. It is submitted that there is no provision in law to the effect that a conciliator may submit on behalf of the parties where a dispute is unresolved.
26. It is submitted that pursuant to Section 69 of *Labour Relations Act* the conciliator ought to have issued a certificate of unresolved issues as the dispute was not resolved. The court is urged to find that there is no conciliation agreement and hence settle the matter down for hearing and determination.

#### IV. Analysis & Determination

27. The court has carefully and dutifully studied the application, the affidavit in support thereof, the PO, and the written submissions by both parties, alongside all the cited authorities. The following issues commend themselves to the court for determination – Whether the application is competent and meritorious; and, Who should meet the costs of this application.
28. The 1<sup>st</sup> and 2<sup>nd</sup> respondents submitted that the application is incompetent as it offends Sections 67,68 & 69 of the *Labour Relations Act*. It is the view of the two respondents that parties to a conciliation voluntarily appear before the conciliator and if they settle their dispute, the terms of the settlement are recorded in writing and an agreement is signed by the parties and the conciliator. It is submitted that where fail to agree, the conciliator should issue a certificate of unresolved issues. The respondents submitted that no conciliation agreement was signed by the parties and the conciliator failed to issue a certificate of unresolved issues as required by the law.
29. The 1<sup>st</sup> and 2<sup>nd</sup> respondents’ case is that there is no conciliation agreement for adoption by the court and the dispute should thus be referred back to court for hearing and determination.
30. The applicant, on the other hand, argues that what is contemplated under Rule 69 of the Employment and Labour Relations Court (Procedure) Rules is not only a conciliation agreement but a decision by a conciliator suffices for adoption by the court.
31. Rule 69 states that-
  - “(1) Where parties have entered into a conciliation, negotiation or mediation agreement, or, are bound by an arbitral award or a lawful decision reached in Alternative Justice Systems, a party may file the award, decision or agreement for adoption and enforcement as an order of the Court.
  - (2) An application under subrule (1) shall be by way of a miscellaneous application instituted through a notice of motion supported by an affidavit exhibiting the award, decision, or agreement together with all relevant documents.” (Emphasis added)
32. The court in Kakamega ELRC Cause No. E007 of 2024 referred the parties therein to conciliation on the issue of a recognition agreement. The court has perused the consequent conciliation report dated 23<sup>rd</sup> May, 2024 and observed that while the claimant stated that they had recruited a total of 766 members out of the 800 ECDE teachers employed by the County, thus satisfied the threshold for signing a recognition agreement under Section 54 of the *Labour Relations Act*, the 1<sup>st</sup> and 2<sup>nd</sup> respondents indicated that they needed more time to meet the union for a proper introduction and understanding of the union demands and indicated that the union had failed to follow the proper protocol while recruiting its members.



33. In her report the conciliator in his recommendation directed that the employer should sign a recognition agreement with the union as the union had met the 50% plus 1 threshold under Section 54 of the *Labour Relations Act*. The conciliator recommended that the parties meet on 24<sup>th</sup> May, 2024 and thereafter brief the labour office of the outcome. The court has perused the conciliation report and finds that the parties did not sign an agreement. They did not reach a consensus on the issue in dispute.
34. The Black's Law Dictionary, 9<sup>th</sup> Edition defines an agreement as –
- A mutual understanding between two or more persons about their relative rights and duties regarding past or future performances; a manifestation of mutual assent by two or more persons.
35. From the conciliator's report, there was no consensus on the issue of the recognition agreement between the parties. The conciliator made his recommendation for consideration by the respondent.
36. The application was based on Rule 69(2) of the Employment and Labour Relations Court (Procedure) Rules which requires that the application be supported by an affidavit exhibiting the award, decision, or agreement together with all relevant documents.
37. The court finds that no conciliation agreement is attached to the report and the application. What is exhibited is a recommendation by the conciliator which may only serve as evidence of the status of the issue rather than a conclusive agreement between the parties as contemplated in law.
38. Under section 54(7) of the *Labour Relations Act* the applicant has a right to refer a matter not settled in conciliation to court through a certificate of urgency.
39. In the application, the applicant is seeking for orders to compel the respondents to sign a recognition agreement. However, the application is not based on a substantive cause seeking for the court to compel the 1<sup>st</sup> and 2<sup>nd</sup> respondents to sign a recognition agreement.
40. Where a court is called to adjudicate on the rights of the parties, then, there exists a “civil action” which must be commenced in the manner prescribed by the Rules and not by way of a miscellaneous application. It should therefore be hinged on a substantive cause which must be commenced by way of a claim as contemplated under Rule 8(1)(b) of Employment and Labour Relations Court (Procedure) Rules which provides that –
- (b)where the labour dispute has been the subject of conciliation, the statement of claim shall be accompanied by—(i)a report by the conciliator, if any, which shall not be binding upon the Court, stating the position of the parties on the dispute, and the findings and recommendations of the conciliator; and
- (ii)a certificate of conciliation issued by the conciliator under section 69(a) of the *Labour Relations Act* (Cap. 233).
41. The court has already observed that while the conciliator issued a conciliation report, the conciliator failed to issue the appropriate certificate of unresolved dispute.
42. Based on the foregoing, the court finds that the PO by the 1<sup>st</sup> and 2<sup>nd</sup> respondents has merit. No cause has been properly filed as required by law. For those reasons, the applicant's application is dismissed with no orders as to costs.



43. There is also the issue for determination as to whether the respondents named herein are capable of being sued for and on behalf of the employer, the County, for the orders sought. That issue may only be canvassed in a substantive cause.

**V. Order**

44. The court orders that –
- i. The application is dismissed with no orders as to costs.
  - ii. The conciliator, Dorcas Ouma, is directed to issue an appropriate certificate alongside her report dated 23<sup>rd</sup> May, 2024 as contemplated under Section 69(a) of the *Labour Relations Act*.
  - iii. That this ruling be served upon the conciliator through the Deputy Registrar of this court.

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT KAKAMEGA THIS 6TH DAY OF MARCH, 2025.**

.....  
**DAVID NDERITU**  
**JUDGE**

