



**Banking Insurance and Finance Union (Kenya) v National Health Insurance Fund & another (Cause E466 of 2023) [2025] KEELRC 1246 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1246 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE E466 OF 2023**  
**BOM MANANI, J**  
**APRIL 30, 2025**

**BETWEEN**

**BANKING INSURANCE AND FINANCE UNION (KENYA) ..... APPLICANT**

**AND**

**NATIONAL HEALTH INSURANCE FUND ..... 1<sup>ST</sup> RESPONDENT**

**KENYA UNION OF COMMERCIAL FOOD AND ALLIED**

**WORKERS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Claimant is a trade union which is registered under the *Labour Relations Act*, Cap 233 Laws of Kenya. It has instituted these proceedings against the Respondents claiming that it has recruited 827 of the 1<sup>st</sup> Respondent's 1,181 employees who were previously members of the 2<sup>nd</sup> Respondent. As such, it demands that the 1<sup>st</sup> Respondent accords it recognition for purposes of collective bargaining. At the same time, it seeks an order requiring the 1<sup>st</sup> Respondent to remit to it trade union dues allegedly deducted from the 827 employees and an order forbidding the 1<sup>st</sup> Respondent from remitting the said dues to the 2<sup>nd</sup> Respondent.
2. Cotemporaneous with the Statement of Claim, the Claimant filed the application dated 8<sup>th</sup> June 2023 under certificate of urgency. In the motion, the Claimant seeks the following orders:-
  - a. Spent.
  - b. Spent.
  - c. Spent.
  - d. That the court issues an order compelling the 1<sup>st</sup> Respondent to sign a Recognition Agreement with it (the Claimant) for purposes of collective bargaining since it (the Claimant) has



allegedly secured more than a simple majority of the 1<sup>st</sup> Respondent's unionisable employees in accordance with the law.

- e. That the 1<sup>st</sup> Respondent be ordered to pay it (the Claimant) trade union dues irregularly deducted from its (the Claimant's) members and remitted to the 2<sup>nd</sup> Respondent.
  - f. That the court awards it (the Claimant) costs of the application.
3. The application is supported by affidavits sworn by one Joseph Lepapa Tipape, the Claimant's General Secretary. The affiant avers that he is conversant with the facts of the case and is therefore competent to swear the affidavits.
  4. He further avers that the Claimant is registered to represent workers in the financial sector in Kenya and that the 1<sup>st</sup> Respondent falls in this sector. He contends that the Claimant recruited 827 out of 1,181 unionisable employees of the 1<sup>st</sup> Respondent and forwarded the check-off forms to the 1<sup>st</sup> Respondent
  5. The affiant further contends that the 827 employees were initially members of the 2<sup>nd</sup> Respondent. However, they allegedly resigned from the 2<sup>nd</sup> Respondent and voluntarily joined the Claimant. As such, they are no longer members of the 2<sup>nd</sup> Respondent.
  6. The affiant also avers that the 827 employees the Claimant recruited comprise more than 70% of the 1<sup>st</sup> Respondent's unionisable workforce. As such, it is entitled to be recognized by the 1<sup>st</sup> Respondent for purposes of collective bargaining.
  7. The Respondents have opposed the application. They both have filed affidavits in response.
  8. The 2<sup>nd</sup> Respondent filed a preliminary objection challenging, inter alia, the competence of both the suit and application. According to it (the 2<sup>nd</sup> Respondent), the suit and application are incompetent because the pleadings were not signed by an authorized officer of the Claimant as required by sections 2 and 73 (3) of the [Labour Relations Act](#).
  9. After considering the objection, the court rejected it. It was its (the court's) view that whether or not the signatory to the pleadings was authorized to sign them by the Claimant's General Secretary was a matter of fact which required evidence. As such, it (the court) indicated that the Claimant had the opportunity to prove this fact at the hearing of the application for interim reliefs and the main suit.
  10. Therefore, during the hearing of the instant application, the Claimant was expected to demonstrate that the person who signed the Statement of Claim and the application was authorized to do so by its (the Claimant's) General Secretary. It was expected that the Claimant's General Secretary would seek leave of the court to file an affidavit introducing this evidence.
  11. However and as the record suggests, this was not done. As such, at the point of writing this ruling, there was no evidence on record to confirm that the signatory to the application and Statement of Claim had the Claimant's General Secretary's written authority to sign the pleadings in the cause.
  12. In its replying affidavit dated 7<sup>th</sup> September 2023, the 1<sup>st</sup> Respondent avers that it has 1164 unionisable employees within its rank and file. It avers that it entered into a Recognition Agreement with the 2<sup>nd</sup> Respondent on 15<sup>th</sup> March 2004, the latter having recruited more than a simple majority of its (the 1<sup>st</sup> Respondent's) unionisable employees.
  13. The 1<sup>st</sup> Respondent avers that it thereafter entered into a number of collective bargaining agreements with the 2<sup>nd</sup> Respondent, the last of which was to lapse in June 2023. The 1<sup>st</sup> Respondent avers that before the aforesaid agreement lapsed, it received correspondence from the Claimant in April 2023 through which the Claimant forwarded to it (the 1<sup>st</sup> Respondent) a draft Recognition Agreement.



14. The 1<sup>st</sup> Respondent avers that at the same time, the Claimant served it with a schedule of 861 employees who had resigned from the 2<sup>nd</sup> Respondent to join it (the Claimant). The 1<sup>st</sup> Respondent contends that the mass exodus of employees from the 2<sup>nd</sup> Respondent to the Claimant was triggered by the changes which the 2<sup>nd</sup> Respondent introduced in computing the trade union dues which the affected employees were to pay.
15. The 1<sup>st</sup> Respondent avers that during the exodus, it received complaints from some of the employees that the check-off forms submitted by the Claimant had been falsified. As such, the 1<sup>st</sup> Respondent contends that it became necessary to audit the transition in order to filter the employees who had joined the Claimant from those who had not. It (the 1<sup>st</sup> Respondent) avers that the verification exercise it conducted in August 2023 showed that 737 employees had joined the Claimant whilst 427 were still with the 2<sup>nd</sup> Respondent.
16. The 1<sup>st</sup> Respondent further avers that during the verification exercise, the Government passed new laws which changed management of the health sector. As a result, it contends the job security for its work force was no longer guaranteed
17. The 1<sup>st</sup> Respondent avers that the aforesaid changes in the health sector triggered further movement of staff from one trade union to the other in a bid by them (the staff) to align with the trade union that was able to address their emerging challenges. As such, the 1<sup>st</sup> Respondent avers that as at November 2023, its records showed that the 2<sup>nd</sup> Respondent had 670 of the unionisable employees whilst the Claimant had 494 of them. The 1<sup>st</sup> Respondent avers that this movement was still ongoing at the close of November 2023.
18. The 1<sup>st</sup> Respondent contends that the foregoing demonstrates that from May 2023 to November 2023, there was a lot of shifting in membership from one trade union to the other making it difficult to determine the membership of any of the unions at any given time. It further contends that at the same time, owing to the issue of falsified check-off forms, there was need to verify the forms submitted to it in order not to make erroneous payments to any of the trade unions. As such, it contends that it halted deduction and remittance of trade union dues for all affected staff between May 2023 and November 2023 pending completion of the verification process.
19. The 1<sup>st</sup> Respondent avers that it only resumed deduction of trade union dues from November 2023. It avers that it initially only made deductions from employees who had remained with the 2<sup>nd</sup> Respondent but later effected deductions for employees who had joined the Claimant and remitted the funds accordingly. The 1<sup>st</sup> Respondent avers that this was the best way to navigate the oscillation of membership from one trade union to the other as it ensured that no employee whose membership to either of the unions was unclear was adversely affected by the deductions.
20. The 1<sup>st</sup> Respondent contends that the law permits employees to make direct remittances of trade union dues to a trade union. As such, the employees were at liberty to remit their dues directly either to the Claimant or the 2<sup>nd</sup> Respondent as their membership issue was being addressed.
21. The 1<sup>st</sup> Respondent contends that in view of the back and forth movement of staff from one union to the other, it became difficult to ascertain which of the two unions had a simple majority of unionisable employees for purposes of recognition. As such, it disputes the Claimant's assertion that it unlawfully declined to recognize it for purposes of collective bargaining.
22. On its part, the 2<sup>nd</sup> Respondent swore an affidavit through which it claims to be the rightful representative of the 1<sup>st</sup> Respondent's unionisable employees. The 2<sup>nd</sup> Respondent contends that it



has a valid subsisting Recognition Agreement with the 1<sup>st</sup> Respondent which has not been challenged before the National Labour Board or the Ministry of Labour and Social Protection.

23. The 2<sup>nd</sup> Respondent avers that the 1<sup>st</sup> Respondent cannot simultaneously recognize two trade unions for the same sector. As such, the Claimant cannot insist on being recognized by the 1<sup>st</sup> Respondent until the Recognition Agreement between it (the 2<sup>nd</sup> Respondent) and the 1<sup>st</sup> Respondent is validly revoked.
24. The 2<sup>nd</sup> Respondent maintains that it still has more than a simple majority of all the unionisable employees of the 1<sup>st</sup> Respondent (936 members). It contends that 509 of the employees who had been recruited by the Claimant recanted their recruitment and affirmed their membership with it (the 2<sup>nd</sup> Respondent). As such, it contends that it is entitled to continue representing their interests.
25. The 2<sup>nd</sup> Respondent questions the authenticity of the check-off forms which the Claimant relies on to assert its claim. It (the 2<sup>nd</sup> Respondent) asserts that some of the signatures on the forms are forged. It further contends that some names had been entered on the forms more than once.
26. The 2<sup>nd</sup> Respondent contends that the Claimant's excursions into its (the 2<sup>nd</sup> Respondent's domain) are intended to create industrial disharmony in the sector which should not be encouraged by the court. It (the 2<sup>nd</sup> Respondent) avers that the Claimant should not be allowed to ride on eschewed amendments to its constitution to stir disharmony in the sector where the 2<sup>nd</sup> Respondent is the registered representative of employees.
27. The 2<sup>nd</sup> Respondent avers that the Claimant cannot seek an order for recognition through an interlocutory application. It contends that such order can only issue after interrogation of evidence at a trial. The 2<sup>nd</sup> Respondent further avers that the orders which the Claimant seeks in the application are the very same ones which it (the Claimant) has sought in the suit. As such, they should await resolution of the main suit.
28. The 2<sup>nd</sup> Respondent further avers that the Claimant is aware that there were changes in the laws regulating the health sector which phased out the 1<sup>st</sup> Respondent from October 2024. It contends that from October 2024, the proper body which is entrusted with management of the health sector in Kenya is the Social Health Authority and not the 1<sup>st</sup> Respondent.

### **Issues for Determination**

29. After analyzing the pleadings, affidavit evidence and submissions by the parties, the following issues present for determination:-
  - a. Whether the Claimant has demonstrated that the application was signed by its authorized representative.
  - b. Whether the application is merited in the face of the transitory process in the health sector.
  - c. Whether the orders sought should issue.

### **Analysis**

30. Regarding the first issue, it is noteworthy that in its ruling which was delivered on 26<sup>th</sup> October 2023, the court observed as follows:-

“...whether Joseph Lepapa Tipape granted Tom O Odero the authority to institute these proceedings on behalf of the Claimant is a matter of fact which can only be determined through evidence. In my view therefore, such matter is not suitable to be determined as a preliminary point of law. It is up to



the Claimant to demonstrate through production of evidence at the time of hearing of the pending interlocutory application and the main action that the officer who signed the pleadings on record was authorized to do so.”

31. Prior to the hearing and determination of the preliminary objection, the Claimant filed a supplementary affidavit dated 13<sup>th</sup> July 2023 seeking to introduce a letter dated 10<sup>th</sup> July 2023 which had purportedly authorized Tom O Odero to sign the pleadings which instituted the action. However, this affidavit was struck out on 26<sup>th</sup> July 2023 because it had been filed without leave of the court. As such, it ceased to form part of the court record from 26<sup>th</sup> July 2023.
32. The foregoing being the position, it was expected that the Claimant would seek leave of the court to file a competent affidavit to introduce the letter of authority. However, it did not. As such, as at the time of writing this ruling, there was no evidence that had been tendered to demonstrate that Tom O Odero had the authority of the Claimant’s General Secretary to sign the pleadings in the cause.
33. The above being the position, the court finds that the Claimant has so far not demonstrated that its General Secretary authorized Tom O Odero in writing to sign the application dated 8<sup>th</sup> June 2023 as required under section 73(3) as read with section 2 of the Labour Relations Act. In the premises, the court finds that the application is incompetent for want of proof of proper execution.
34. The application having been declared incompetent for want of proof of proper execution, it follows that it (the application) cannot provide a foundation for interrogation of any other issue on the merits. As such, the court will not delve into the two other issues it had framed for interrogation.
35. That said, the court takes judicial notice of the transition process in the health sector. The court notes that the National Assembly enacted the Social Health Insurance Act, 2023 which came into force on 22<sup>nd</sup> November 2023. Section 54 of the Act repealed the National Health Insurance Fund Act effectively bringing the life of the 1<sup>st</sup> Respondent to a close. By virtue of section 6 of the First Schedule to the new Act, the Board of the 1<sup>st</sup> Respondent was granted one year to wind up the 1<sup>st</sup> Respondent. By virtue of section 4 of the First Schedule to the Act, all proceedings by or against the 1<sup>st</sup> Respondent were to henceforth be conducted by and in the name of the Social Health Authority.
36. These changes have certainly impacted on these proceedings. It is therefore necessary and up to the parties to carefully interrogate the impact of the changes on the proceedings and act accordingly.

#### **Determination**

37. Accordingly, the application fails for want of proof of proper execution by an authorized representative of the Claimant.
38. Costs of the application shall abide the outcome of the suit.

**DATED, SIGNED AND DELIVERED ON THE 30<sup>TH</sup> DAY OF APRIL, 2025**

**B. O. M. MANANI**

**JUDGE**

In the presence of:

..... for the Claimant/Applicant

.....for the Respondent

ORDER



In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties 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.

**B. O. M MANANI**

