



**Kenya Engineering Workers Union v Mehta Electricals Ltd (Cause  
1397 of 2018) [2025] KEELRC 1107 (KLR) (4 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1107 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1397 OF 2018  
CN BAARI, J  
APRIL 4, 2025**

**BETWEEN  
KENYA ENGINEERING WORKERS UNION ..... CLAIMANT  
AND  
MEHTA ELECTRICALS LTD ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Claimant herein filed a Memorandum of Claim dated 24<sup>th</sup> September 2018, seeking recognition by the Respondent.
2. The Respondent entered appearance on 27<sup>th</sup> September, 2018 and subsequently filed a Memorandum of Response dated 19<sup>th</sup> January 2024.
3. On 4<sup>th</sup> November, 2024, the Claimant sought to withdraw their applications dated 13<sup>th</sup> July, 2022 and 24<sup>th</sup> September, 2018. The request to withdraw the two applications was allowed, and parties directed to file written submissions on the main claim.
4. Submissions were received from both parties.

**The Claimant's Case**

5. The Claimant's case is that it is a registered Trade Union under the [Labour Relations Act](#), 2007, and authorized to cater for all unionisable employees of the engineering industry.
6. It states that the Respondent's action of declining to recognize it and forcing its members to resign from the union or be sacked from their employ, is contrary to Article 36 of [the Constitution](#) on freedom of association and Section 4 of the [Labour Relations Act](#).



7. The Claimant states that when it could not agree with the Respondent, it reported a trade dispute pursuant to Section 62 of the [Labour Relations Act](#) to the Minister, but that no conciliator was appointed within the stipulated time lines, prompting it to move to court under Section 65 and 74 of the [Labour Relations Act](#), 2007.
8. It is the Claimant's prayer that the Respondent be ordered to sign a recognition agreement with it, as provided for under Section 54(1) and 48(1) of the [Labour Relations act](#).

### **The Respondent's Case**

9. The Respondent states that it received a letter dated 25<sup>th</sup> August 2018 from the Claimant, wherein, it was communicated that 66 employees affiliated with the Respondent had endorsed and/or signed a check-off system. That this system conferred authorization upon the Respondent to commence deducting 2% of each individual's basic wage, coupled with an additional sum of Kshs. 150 earmarked for COTU (K) as the Claimant's dues every end month.
10. It states that it addressed the concerns raised by the Claimant through a letter dated 4<sup>th</sup> September 2018, wherein, it clarified that certain issues had been brought to its attention regarding the authenticity of the signatures on the check-off list submitted by the Claimant.
11. It is the Respondent's position that some of the 66 employees in question had lodged complaints asserting that their signatures were improperly included on the list. Additionally, it was highlighted that there were instances where employees' names may have been inadvertently included, and that other individuals on the list, had expressly communicated their reluctance to have union dues deducted from their salaries.
12. The Respondent states that disregarding the concerns articulated by the Respondent, the Claimant, in a letter dated 7<sup>th</sup> September 2018, proposed a joint meeting, and further expressed its intent to convene on 14<sup>th</sup> September 2018 with the primary objective of signing of a recognition agreement.
13. That the Respondent conveyed its inability to proceed with the scheduled meeting vide a letter dated 10<sup>th</sup> September 2018, citing the necessity for a more comprehensive examination of the issues at hand, and which prompted the Claimant to lodge the instant suit on 24<sup>th</sup> September, 2018.
14. The Respondent states that the Claimant has not met the threshold for recognition by the Respondent as provided by Section 54 (1) of the [Labour Relations Act](#). It states further, that this Court does not have Jurisdiction to deal with the recognition dispute herein, because the compulsory jurisdictional procedure on dispute resolution as set out under Part VIII (Section 54 (6)) of the [Labour Relations Act](#) has not been followed.
15. It is the Respondent's case that in order for parties to resolve a dispute such as the one in the instant Suit, the law dictates that the dispute first goes through conciliation and in the event it is not resolved thereunder, the dispute can then be referred to this Court. It avers that this Court can only assume jurisdiction to adjudicate on a recognition dispute after the compulsory dispute resolution procedure under Part VIII of the LRA has been followed.
16. It is the Respondent's case that no evidence has been presented before this Court to indicate that the dispute in question was referred to a conciliator in accordance with the provisions of Section 54(6) of the [Labour Relations Act](#). That the non-compliance with the statutory provisions renders the suit premature and bad in law.



17. The Respondent further states that the Claimant's allegations that it has been harassing its employees against joining the Claimant are false. That the Respondent's employees have the right to leave or join any union of their choosing and they similarly have every right to leave such union.
18. The Respondent states that the Claimant is not entitled to the reliefs claimed in the Memorandum of Claim and the same should be dismissed with costs.

### **The Claimant's submissions**

19. The Claimant submits that it is not mandatory to report a dispute to the Ministry of Labour within the meaning of Section 62 (1) of *Labour relations Act*, 2007 which provides that a trade dispute may be reported to the Minister.
20. It is the Claimant's further submission that the employees whom the Respondent alleged to have resigned from the Claimant Union, did so long after the date when the Claimant sought recognition which does not affect the right of the Claimant to be recognized by the Respondent under Section 54(1) of *Labour Relations Act* 2007.
21. The Claimant submits that it had a simple majority of the employees of the Respondent as at the time it sought recognition, and is therefore entitled to be recognized by the Respondent herein. It placed reliance in ELRCC E029 of 2022 Kenya Engineering Workers Union versus Empire Glass Industries Limited to support this position.
22. The Claimant submits that it is evident that the alleged resignation of the Respondent's employees was forcibly made by the Respondent's own making without considering the Mandatory provisions of Section 48(7) & (8) of *Labour Relations Act* 2007.
23. It is the Claimant's submission that this dispute was filed on 24<sup>th</sup> September, 2018 and the Respondent filed her Response on 19<sup>th</sup> October, 2024 in total violation of Rule 29(1) of Employment and Labour Relations Court procedure Rules 2024.

### **The Respondent's Submissions**

24. The Respondent submits that its Memorandum of Response is properly before this Honourable Court, having been filed with leave of the Court. The Respondent further urges this Court to consider it on its merits in the determination of this matter.
25. It is the Respondent's submission that per Section 54(6) of the *Labour Relations Act*, 2007, a dispute regarding recognition must first be subjected to conciliation before being escalated to the Employment and Labour Relations Court. The Respondent had reliance in the case of Kenya Union of Non-Governmental Organizations, Employees & Human Rights Providers v. Chief Coffe Department of Health Homabay & 2 Others (Cause E078 of 2021) [2023] KEELRC 2386 (KLR) to support this position.
26. The Respondent submits that the Claimant has not provided evidence that the statutory dispute resolution process was exhausted, and the failure to comply with the mandatory procedure deprives this Honourable Court of jurisdiction to entertain the claim.
27. The Respondent submits that the Claimant has failed to demonstrate that it has met the statutory requirements for recognition under Section 54(1) of the *Labour Relations Act*, 2007. That the burden of proving the simple majority representation squarely lies with the Claimant, which has not discharged this obligation.



28. The Respondent submits that it reviewed the Check-Off System submitted by the Claimant and uncovered fundamental irregularities that cast serious doubt on the validity of the Claimant's claims. It sought to rely in the case of *Transport Workers Union v Etihad Airways* [2019] KEELRC 2294 (KLR) for the holding that:-

“Recognition is not automatic upon registration of a trade union. The union must satisfy the statutory criteria, and where there is a dispute, the issue must be verified by way of credible documentation and confirmation from the employees concerned.”

29. The Respondent finally submits that the Claimant has not provided verification, making its claim for recognition legally unsustainable.

### **Analysis and Determination**

30. Upon careful consideration of the pleadings and the written submissions by both parties, the issues for determination are:-

- i. Whether the Respondent defended this suit;
- ii. Whether the Court has jurisdiction to hear and determine this suit on account of exhaustion of alternative remedies; and
- iii. Whether the Claimant has met the threshold for recognition by the Respondent

### **Whether the Respondent defended this suit**

31. On the Claimant's argument that the Respondent's response is not properly before court, the record indicates that the Claimant had severally sought leave to amend its statement of Claim which seem not to have been filed. The court at that juncture allowed the Claimant leave to amend, and the Respondent corresponding leave to do the same.

32. I note further, that on 4<sup>th</sup> November, 2024, the Respondent's Counsel sought leave to file documents, and which leave was granted. I thus proceed to find the Respondent's response and documents are properly on record, and the claim herein as defended.

### **Whether the Court has jurisdiction to hear and determine this suit on account of exhaustion of alternative remedies**

33. The Respondent has challenged this Court's jurisdiction to determine this matter on the basis that the issues subject of the suit were not conciliated as required by law, prior to the lodging of the instant suit. Jurisdiction they say is everything, and without which the court must down its tool. (See *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR).

34. Section 54 (6)(7)(8) of the [Labour Relations Act](#), 2007, provides thus:-

- “(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.”

35. By this provision, there is no doubt that a dispute such as the one before me, is one that should in the first instance, have been referred for conciliation before parties could invoke the jurisdiction of this court.

36. The Claimant’s position is that it reported a trade dispute to the Minister of Labour, but that the Minister did not appoint a conciliator prompting it to lodge this matter in court. It further submitted that under Section 62 (1 of *Labour relations Act*, 2007, it is not mandatory to report a dispute to the Minister of Labour.

37. The Court record bears a letter to the Cabinet Secretary Ministry of Labour dated 14<sup>th</sup> August, 2018, and which dates seem to have been amended. The letter does not show that it was received by the Cabinet Secretary, not to mention that the suit herein, was lodged just a month after reporting of the dispute even going by the amended date.

38. On the Claimant’s assertion that the requirement for conciliation is not mandatory, this court in the case of *Kenya Union of Non-Governmental Organizations, Employees & Human Rights Providers v. Chief Coffe Department of Health Homabay & 2 Others (Cause E078 of 2021) [2023] KEELRC 2386 (KLR)*, held that:-

“Section 54(6) though not couched in mandatory terms, no doubt provides a mechanism for resolution of a dispute such as that in this matter by way of conciliation. Further, if the legislature did not intend that a dispute on whether or not a union should be recognized by an employer does not have to be conciliated, nothing would have been easier than to expressly say so.

A purposive interpretation of this section points me to the conclusion that the entire section 54 of the *Labour Relations Act*, was meant to be adhered to as is- meaning that a party has to first subject themselves to conciliation before seeking the court’s intervention on an impasse over recognition.”

39. Further, the Court of Appeal in *County Government of Nyeri & Anor. v Cecilia Wangechi Ndungu [2015] eKLR* held that:-

“Interpretation of any document ultimately involves identifying the intention of Parliament, the drafter, or the parties. That intention must be determined by reference to the precise words used, their particular documentary and factual context, and, where identifiable, their aim and purpose. To that extent, almost every issue of interpretation is unique in terms of the nature of the various factors involved. However, that does not mean that the court has a completely free hand when it comes to interpreting documents; that would be inconsistent with the rule of law, and with the need for as much certainty and predictability as can be attained, bearing in mind that each case must be resolved by reference to its particular factors.”

40. In the circumstances, I find and hold that the Claimant ought to have had the dispute herein conciliated before invoking the jurisdiction of this court. The suit at this point is therefore, premature and violates the doctrine of exhaustion and ousts the jurisdiction of the court.



41. The upshot is that the court lacks jurisdiction to entertain the Claimant's claim and is for striking out, and which I hereby do.
42. The question of whether the Claimant met the threshold for recognition, then, falls by the way side.
43. Judgment of the Court.

**DATED, SIGNED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS  
4<sup>TH</sup> DAY OF APRIL, 2025.**

**C. N. BAARI**

**JUDGE**

Appearance:

Mr. Araka present for the Claimant

Ms. Maina h/b for Mr. Wandati for the Respondent

Ms. Esther S - CA

