



**Kenya Chemical Workers Union v Alliance Concrete Limited (Cause E990 of 2024) [2025] KEELRC 1045 (KLR) (2 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1045 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E990 OF 2024  
BOM MANANI, J  
APRIL 2, 2025**

**BETWEEN**  
**KENYA CHEMICAL WORKERS UNION ..... CLAIMANT**  
**AND**  
**ALLIANCE CONCRETE LIMITED ..... RESPONDENT**

**RULING**

1. The Claimant is a trade union that is registered in the Republic of Kenya under the [Labour Relations Act](#), 2007. It contends that its Constitution entitles it to operate within the chemical sector where the Respondent’s business allegedly falls.
2. The Claimant further contends that it has recruited 109 out of 150 employees of the Respondent as its (the Claimant’s) members. It avers that this surpasses the simple majority required for it to be recognized by the Respondent. As such, it contends that it is entitled to enter into a recognition agreement with the Respondent.
3. The Claimant asserts that after recruitment of the 109 members from the Respondent’s workforce, the new members executed check-off forms authorizing the Respondent to deduct and remit trade union dues to it (the Claimant). The Claimant avers that the Respondent deducted and remitted the dues for the 109 employees for the month of September 2024. However, it (the Respondent) stopped making the deductions thereafter in defiance of the law.
4. The Claimant asserts that on 22<sup>nd</sup> August 2024, the Respondent initiated a campaign to coerce its (the Claimant’s) members to withdraw their union membership. It avers that the Respondent did so by sending union withdrawal forms to its workforce and demanding that they sign them.
5. The Claimant avers that as a result of the aforesaid campaign, a total of 95 employees withdrew their union membership. Consequently its members from the Respondent’s workforce dropped to 11%.



6. The Claimant avers that the Respondent's actions violated the employees' right to join a trade union of their choice. As such, it contends that the Respondent has contravened provisions of the Constitution and the Labour Relations Act.
7. The Claimant further contends that after it attained the simple majority threshold aforesaid, the Respondent was under legal obligation to recognize it for purposes of collective bargaining. As such, the refusal to do so is a violation of the law.
8. The Claimant contends that on 29<sup>th</sup> August 2024, is reported a trade dispute to the Ministry of Labour and Social Protection. It avers that the parties attended conciliation where-after the conciliator issued his report dated 26<sup>th</sup> September 2024.
9. The Claimant contends that the conciliator confirmed that it (the Claimant) had recruited 109 members from the Respondent's workforce of 120 individuals as at 4<sup>th</sup> September 2024. It contends that this was about 91% of the Respondent's workforce. It further contends that the conciliator confirmed that it (the Claimant) had submitted duly signed check-off forms to the Respondent for further action.
10. The Claimant prays for, inter alia, orders compelling the Respondent to: recognize it as the trade union that is entitled to represent workers at the Respondent's premises; remit trade union dues it deducted after September 2024 but did not remit; collect and remit trade union dues from unionizable employees; pay interest on the unremitted union dues; and pay damages for violation of the Claimant's constitutional rights.
11. Together with the Memorandum of Claim, the Claimant filed the application dated 20<sup>th</sup> November 2024. In the application, the Claimant seeks the following orders:-
  - a. Spent.
  - b. Spent.
  - c. That pending the hearing and determination of the case, the court be pleased to issue an order of permanent injunction restraining the Respondent from harassing, intimidating or coercing union members on account of their membership with the Claimant.
  - d. Spent.
  - e. That pending the hearing and determination of the case, the court be pleased to issue an order of temporary injunction restraining the Respondent either by itself or through its servants and or agents from interfering with the employment of union members in any manner whatsoever on account of this case.
  - f. Spent.
  - g. That pending the hearing and determination of the case, the court be pleased to issue an order for the Claimant to access the Respondent's premises.
  - h. That pending the hearing and determination of the case, the court be pleased to issue an order restraining the Respondent and or its servants and or agents from harassing or intimidating the Claimant's members on account of this suit.
  - i. That the court be pleased to issue any other orders that it deems fit and just.
  - j. That the court gives directions on costs of the application.



12. The application is anchored on the various grounds that are set out on the face of the motion. It is also supported by two affidavits sworn by Peter Ouko Onyango, the Claimant's National General Secretary.
13. The first affidavit principally reiterates the Claimant's case as set out in the Memorandum of Claim. The second affidavit is a response to the Respondent's affidavit in answer to the application.
14. The Respondent has opposed application. It has filed two affidavits dated 9<sup>th</sup> December 2024 and 6<sup>th</sup> January 2025 in this respect through its Human Resource Manager. It contends that the application is frivolous and an abuse of the court process and should be dismissed.
15. The Respondent contends that it is in the business of concrete mixing and pumping. It contends that this does not fall in the sector where the Claimant is supposed to operate. As such, it contends that the Claimant is not entitled to recruit members from its (the Respondent's) workforce.
16. The Respondent asserts that the law requires trade unions to be registered with regard to specific sectors. As such, their (the trade unions) constitutions should clearly speak to their sectoral limits.
17. The Respondent denies that the Claimant has recruited a simple majority of its workforce. As such, it contends that the Claimant has not satisfied the statutory threshold for purposes of recognition.
18. The Respondent contends that the check-off forms which the Claimant has produced in evidence are forged. It avers that some of the names on the lists do not have signatures against them to vouch for their authenticity.
19. The Respondent contends that it has taken up the issue of forgery of the forms with the relevant government agencies and is awaiting their report on the matter. As such, it contends that it is not proper for it to either enter into a recognition agreement with the Claimant or deduct and remit trade union dues until the results of the investigations are out.
20. The Respondent contends that it has total a workforce of 166 employees (the replying affidavit speaks of 166 whilst the supplementary affidavit speaks of 159). It disputes the Claimant's contention that it (the Claimant) has recruited 109 members from this workforce. It contends that a number of employees who had signed up with the Claimant subsequently withdrew their membership and should not be included in the list of the 109 individuals.
21. The Respondent contends that the conciliator's report confirms that up to 95 employees who had signed up with the Claimant withdrew their membership leaving the percentage of those who remain at 11%. As such, it contends that the Claimant has not met the simple majority requirement for recognition.
22. The Respondent contends that the law prohibits it from making trade union deductions from employees who have withdrawn from the Claimant's membership. It contends that once it received withdrawal forms from the affected employees in September 2024, the obligation not to continue deducting trade union dues from them crystalized from October 2024.
23. The Respondent denies that some of the employees who withdrew from the Claimant rejoined it (the Claimant). It (the Respondent) contends that the documents which the Claimant relies on to make this assertion are forgeries. It further contends that as a matter of fact, some of the employees have written to express their displeasure on the matter.
24. The Respondent further contends that it is yet to receive a ministerial order directing it to deduct and remit union dues to the Claimant. It contends that absent this order, it will be irregular to effect the impugned deductions.



25. The Respondent denies that it has harassed or intimidated its employees on account of their desire to join a trade union. It contends that the Claimant has not tabled evidence to demonstrate that its members have been subjected to the harassment and intimidation alluded to.

### **Analysis**

26. It is not in doubt that the Claimant undertook recruitment of members from the Respondent's workforce. However, the preliminary evidence before court demonstrates that there is a dispute regarding whether it (the Claimant) has met the statutory threshold for recognition by the Respondent.
27. Whether the Claimant has met this threshold is a matter of evidence which will be determined through trial. As such, the court will make no further comments on the subject at this stage of the proceedings.
28. For now, the court can only address three issues namely: whether the Respondent should be ordered to remit trade union dues to the Claimant; whether the Respondent should be restrained from intimidating and or harassing and or victimizing the Claimant's members on account of their trade union membership and on account of institution of this suit; and whether the Respondent should be ordered to allow the Claimant access to its premises to conduct its trade union activities including recruitment of members.
29. With respect to the first issue, there is disagreement between the parties regarding the identity and number of the Respondent's employees whom the Claimant has recruited as its members. There are allegations that the check-off forms which the Claimant forwarded to the Respondent are forged and the matter is the subject of ongoing forensic investigations.
30. Further, the Respondent contends that most of the individuals whose names appear on the check-off forms have since withdrawn their membership from the Claimant. As such, there is uncertainty as to which of the Respondent's employees are obligated to remit trade union dues to the Claimant.
31. Section 48 of the *Labour Relations Act* requires the Claimant to obtain and serve on the Respondent a ministerial order requiring it (the Respondent) to deduct and remit trade union dues before it (the Respondent) can effectuate the deductions. Although the Claimant has exhibited a ministerial order, it has not provided evidence to confirm that the order was served on the Respondent. In the premises, it is not clear whether the Claimant has complied fully with the foregoing requirement. Absent evidence that the Respondent has been served with this order, it (the Respondent) cannot be compelled to deduct and forward to the Claimant the impugned trade union dues.
32. Further, section 48 of the aforesaid statute prohibits an employer from deducting trade union dues from an employee who has resigned from a trade union. Preliminary evidence on the court file suggests that about 95 employees of the Respondent who had joined the Claimant subsequently withdrew their membership. Although there is a dispute regarding whether the withdrawals were voluntary, the fact of the matter is that there is evidence of withdrawals.
33. Whether the withdrawals were involuntary is a matter of fact that will have to await full trial to be determined. However, at this preliminary stage, the court cannot ignore the reality that there have been withdrawals of membership by some of the Respondent's employees from the Claimant. As a matter of fact the Claimant acknowledges this fact in its affidavits. In the face of this reality, it will be unjust to compel the Respondent to effectuate the impugned deductions as this may impact some employees who have genuinely withdrawn their membership from the Claimant.



34. For the time being, the Claimant ought to collect union dues from employees who remain its members using the mechanism of direct remittance as contemplated under section 52 of the *Labour Relations Act*. The court will not issue an order to compel the Respondent to continue deducting and remitting the impugned dues in the face of the contested recruitment process until the matter is resolved through full trial.
35. The Claimant has prayed for an order of injunction to stop the Respondent from intimidating and victimizing its (the Respondent's) employees on account of this dispute. The Claimant relies on correspondence suggesting police harassment of some of its members under purported instructions from the Respondent. The Claimant has also furnished material to suggest that the Respondent has terminated the contracts of service for some of its (the Claimant's) members on what the Claimant believes are spurious charges.
36. Whilst the Respondent denies that it has victimized some of its employees on account of the ongoing union membership dispute, it has not specifically spoken to the incidences of alleged victimization that the Claimant has flagged. As such, the court is convinced that the Respondent may be applying strong arm tactics to manage the dispute between the parties. In the premises, an order of interim injunction is hereby issued to bar the Respondent from intimidating and or harassing and or victimizing employees who are members of the Claimant on account of their trade union membership and or institution of the instant proceedings.
37. It is a legal requirement for employers to permit trade unions to recruit members at the workplace. As such, the Respondent is under obligation not to unreasonably hinder the Claimant in this endeavor as long as the Claimant does not undertake the process in a manner that is disruptive of the Respondent's work program. Accordingly, the Respondent is ordered to agree with the Claimant on the mechanisms that will permit the Claimant reasonable access to the workplace for the purpose of undertaking trade union activities.

#### **Determination.**

38. After analyzing the affidavit evidence on record:-
  - a. The court declines to issue an order compelling the Respondent to deduct and remit trade union dues to the Claimant pending trial of the case.
  - b. The court issues an order of interim injunction to bar the Respondent from intimidating or harassing or victimizing the Claimant's members on account of their trade union membership and on account of institution of this suit pending determination of the dispute.
  - c. The court directs the Respondent to allow the Claimant reasonable access to its premises for purpose of carrying out recruitment of members and other trade union activities so long as such access is not unduly disruptive to the Respondent's work schedule.
  - d. Costs of the application shall abide the outcome of the suit.

**DATED, SIGNED AND DELIVERED ON THE 2ND 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 12th 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**

