



**Kenya County Government Workers Union v Nairobi Water & Sewerage Company Ltd
& 2 others (CBA 34 of 2020) [2025] KEELRC 1546 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1546 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

CBA 34 OF 2020

B ONGAYA, J

MAY 29, 2025

BETWEEN

KENYA COUNTY GOVERNMENT WORKERS UNION APPLICANT

AND

NAIROBI WATER & SEWAGE COMPANY LTD 1ST RESPONDENT

**NATIONAL UNION OF WATER & SEWAGE EMPLOYEES 2ND
RESPONDENT**

**KENYA UNION OF WATER AND SEWAGE EMPLOYEES
(KUWASE) 3RD RESPONDENT**

RULING

1. There are two applications for determination. One is by the notice of motion dated 21.05.2024 filed by Mathenge Mwitwa Advocates for Kenya County Government Worker Union. It is brought under Order 51 Rule 1 of the Civil Procedure Rules, 2010, section 12 and 16 of the *Employment and Labour Relations Court Act* and rule 33 of the Employment and Labour Relations Court (Procedure) Rules 2016 and any other applicable provisions of the law. The pending prayers for determination are as follows:
 - a. The Honourable Court be pleased to review its decision and orders issued in the matter on 15.01.2021.
 - b. That the Honourable Court be pleased to issue a declaration that the Applicant union herein has the authority to recruit members, secure recognition and enter into collective bargaining agreements with companies in the water service sector across the 47 counties including the 1st respondent.



- c. The declaration be and is hereby issued that the Honourable Court's ruling of 15.01.2021 on CBA No. 34 of 2021 was specific to that particular CBA and therefore did not bar the applicant herein from negotiating CBAs with other water companies in good faith.
 - d. That the Honourable Court be pleased to grant any other orders as it may deem fit and just in the circumstances of the case.
 - e. That costs of the application be provided and the same be borne by the respondent.
2. The application is based on the supporting affidavit of Roba Sharu Duba the union General Secretary sworn on 21.05.2024.
 3. In delivering the ruling on 15.01.2021 the Court (M. OnyangoJ) stated thus:

“It {employer}does not operate under the County Governments which is covered by KCGWU. Further, as already observed, the Court in Cause 439 of 2010 and in C.A. 213 of 2010 directed the KCGWU to remove water companies from its area of operation. In view of the confirmation of these decisions by the Court of Appeal decision in Civil Appeal No. 18 of 2013, the KCGWU has no right to cover employees in the water services sector. It can therefore not represent the employees in that sector. This does not violate the freedom of association under Article 36 of *the Constitution* or the right to join a union of choice in Articles 41 of *the Constitution*. The fact that an employee has a right to join a union does not mean that he can join a union whose membership clause does not cover the sector in which he works. What it means is that the employee has a right to join the right union or the right not to belong to the right union. In deed the wording of Article 41(2) (c) is that every employee has a right “to form, join or participate in the activities and programmes of a trade union”. *The Constitution* does not state that it can be any trade union but “a trade union” meaning that it must be a relevant trade union. This is what the *Labour Relations Act* provides for. This is also why every union is required to have a membership clause that defines who can join its membership. An employee in the water and sewerage sector cannot for example join a trade union covering university lecturers, or agricultural sector because it has freedom to join any union of his choice.

KCGWU must respect the unchallenged determination of this court that it is not the correct or proper union for employees of the water sector where the Nairobi Water and Sewerage Company operates. It must also respect the unchallenged decision of this court as confirmed by the Court of Appeal and expunge employees of water and sewerage companies from the membership clause of its Constitution.

NUWASE also raised the issue that the recognition agreement it signed with Nairobi Water Company is still in place. This is not contested. This being the case, it is the right union to enter into a collective agreement with Nairobi Water. It was thus fallacious to enter into a second recognition agreement with KCGWU when the recognition agreement with NUWASE was still in force. The recognition agreement between Nairobi Water and NUWASE which has been exhibited by NUWASE as Appendix 1 in the affidavit of Elijah Otieno Awach sworn on 24th February 2020 at Clause 2(1) thereof states that it shall recognise NUWASE as the “Sole Labour Organisation representing the interests of unionisable workers who are in the employment of the company in all negotiable matters”.



The company therefore had no capacity to enter into another recognition agreement with KCGWU during the pendency of the recognition agreement with NUWASE.

For the foregoing reasons, I find merit in the application dated 24th February 2020 filed by NUWASE. I thus decline to register the CBA between Kenya County Government Workers Union and Nairobi City Water and Sewerage Company Limited on grounds that the CBA was negotiated without capacity and in violation of the unchallenged decisions of this court in Cause 439 of 2010 and CA No. 213 of 2010 as confirmed by the Court of Appeal in Civil Appeal No. 18 of 2013.

There shall be no orders for costs.”

4. It is urged for the applicant, KCGWU, as follows:
 - a. The ruling limits the rights of the unionisable employees of several water and sewerage or sanitation companies attached to counties from joining KCGWU and yet, the companies are in new development, freely signing collective agreements with the water and sewerage companies. As at time of the ruling the applicant had negotiated and signed with the respondent employer collective agreements for a period over ten years.
 - b. The employees of the respondent company have withdrawn membership in the objector union and have therefore been left without union membership in view of the ruling. After the ruling on 15.01.2021, employers of water and sewerage companies like in Embu, Kirinyaga, Nairobi, Nyeri, Murang'a, Mombasa, and Kericho signed recognition agreements with the objector union NUWASE but the workers left or resigned from NUWASE and joined the applicant union, KCGWU. In Kisumu the employer, water and sewerage company has invoked the ruling and refused recognise the workers right to join the union of their choice, the applicant union KCGWU.
 - c. The court should return that the ruling on CBA No. 34 of 2021 was specific to the CBA therein and hence does not bar water and sewerage companies from negotiating and signing CBAs with the applicant herein.
 - d. The delay in bringing the application has been due to financial constraints of the applicant union, the leadership disputes in applicant union, and, the incompetence of the Advocates leading to instant change of Advocates.
 - e. The ruling and orders therefrom should be reviewed accordingly.
5. The Objector union opposed the application by filing the grounds of opposition dated 29.10.2024 signed by Elijah Otieno Awach for KUWASE and replying affidavit sworn on 29.10.202. It was urged as follows:
 - a. The application is bad in law, lacking in merit, incompetent, frivolous, vexatious and otherwise an abuse of court process.
 - b. The application is res judicata.
 - c. The applicant has no locus to file the application as it has no recognition or collective agreement with the employer.



- d. The objector no longer exist as it has changed its name to Kenya Union of Water and Sewerage (KUWASE) employees which is in existence.
 - e. The application is against public policy because the applicant wishes to seek to fish for a Judge of their choice.
 - f. The application offends provisions of rule 33 of the Employment and Labour Relations Court (Procedure) Rules because it does not disclose material that was not available after due diligence by the Court at the time the orders of 15.01.2019 were issued.
 - g. There is no error apparent on the face of the record to warrant any review of the directions of the Court given on 15.01.2021.
 - h. The Court is functus officio and should not sit on appeal of its own decision given on 15,08,2021 and a further ruling of 13.08.2021.
6. The applicant union filed a further affidavit sworn on 24.10.2024 by the said Roba Sharu Duba. It was urged as follows:
- a. On 15.01.2024 the Court delivered the ruling and on n19.01.2021 the order was issued declining the registration of the CBA between the applicant union and the respondent employer.
 - b. The current application does not seek that the Court sits on appeal on its own decision. However, the applicant union currently has the simple majority of unionisable employees of the 1st respondent employer owing to voluntary movement of members from other unions including the 2nd respondent or objector. The ruling sought to be reviewed prevents the unionisable employees from joining a union of their choice.
 - c. The applicant knows that the objector NUWASE no longer exists by that name and the existing union KUWASE has had its members voluntarily resigning and voluntarily joining the applicant. The ruling should be reviewed to allow the employer's unionisable employees to join the union of their choice.
7. The other and second application for determination is dated 29.01.2025. It was filed by NUWASE styling itself as well as 2nd respondent/applicant NUWASE (Named And & 4 Others) and signed by Philemon Otieno Atik as 2nd respondent /applicant. The application was under section 5 of the Judicature Act, section 12 and 14 of the Employment and Labour Relations Act, Articles 50 and 159 of the Constitution of Kenya, 2010, and sections 6 and 9 of the Labour Relations Act, 2007 and section 12 of the Industrial Court Act and all the enabling provisions of the law. The prayers are for orders as follows:
- a. That national Union of Water and Sewerage Employees & 4 other officials be enjoined as 2nd respondent in these proceedings.
 - b. That leave to commence contempt of court proceedings be granted to the 2nd respondent/ applicant.
 - c. That the 2nd respondent/ applicant and 4 others be granted leave to commence contempt of court proceedings against the claimant/applicant, 1st respondent and objector/ respondent Mr. Eng. N Muguna, Mr. Roba Duba, Elijah Otieno Awach and other interested parties herein for disobeying the express orders by the Honourable Court.



- d. The secretary general of County Government Workers Union and Managing Director of the respondent Company, the general secretary of Kenya Union of Water and Sewerage employees and Registrar of Trade Unions be cited for contempt of Court, founding, money laundering, masquerading, impersonating, plagiarism and abuse of office.
 - e. The Registrar of Trade unions also to come on board and duly inform Court that he has the stake and interest on this matter before the Court.
8. The application was based on the following grounds:
- a. The persons proposed for citation subject of the prayers in the application were served with the Court orders but have disobeyed express orders of the Court. The authority of the Court is thereby in disrepute.
 - b. The objector/respondent wish to register another union KUWASE and illegally orchestrated the change of NUWASE to KUWASE
 - c. The respondent company illegally and unconstitutionally orchestrated the change of NUWASE to unsanctioned name KUWASE using forged documents and manufactured material.
 - d. That the 1st respondent company and Elijah Otieno Awash being the objector/ respondent on 08.07.2022 negotiated the CBA No. E172 of 2022 are in contempt of the court order in cause No. 41(N) of 2020 dated 26.01.2022.
9. The Kenya County Government Workers Union (KCGWU) opposed the joinder and contempt application by filing the replying affidavit of Roba Sharu Duba sworn on 19.02.2025. It was urged and stated as follows:
- a. The applicant was not a party to the instant contempt proceedings which essentially were between the claimant union and respondent company.
 - b. The applicant in the applicant (NUWASE) introduces a stranger to the proceedings known as KUWASE without seeking and obtaining joinder of KUWASE as an interested party or respondent.
 - c. The applicant alleges that KUCGW has disobeyed the order from the ruling by M. Onyango J given on 15.01.2021. NUWASE and 4 other unspecified persons seek leave to commence contempt application proceedings. In the statutory statement NUWASE states that it is a trade union registered on 30.03.2006. However NUWASE is no longer registered and lacks standing. That position was confirmed by Mwaure J in Kenya County Government Workers Union v Nairobi City Water & Sewerage Co Ltd & 3 others; National Union of Water Sewerage Employees (Interested Party) (Employment and Labour Relations Cause E747 of 2021) [2023] KEELRC 2502 (KLR) (13 October 2023) (Ruling) thus, “20.The court had the benefit of summoning the Registrar of Trade Union Mrs Beatrice Mathenge on 21st March 2023 and she informed the court the registered union was KUWASE as there was a change of name from NUWASE to KUWASE and she produced a change of name certificate. She affirmed there was no Union known as NUWASE currently. She produced a certificate of registrar of Kenya Union of Water and Sewerage employees (KUWASE dated 18th March 2020). She also produced a letter dated 17th February 2022 which conformed the duly registered union is KUWASE.”



- d. If the purported applicant indeed existed as NUWASE then it would be a proper path to file fresh contempt proceedings or to file contempt proceedings in the cases in which orders said to have been disobeyed were made. The court lacks jurisdiction to pronounce itself on alleged crimes like money laundering and others.
 - e. The application is hopeless and be dismissed.
 - f. The application is merely calculated to defeat the application for review.
10. The Court has considered the material on record together with the respective positions as urged for the parties. The Court returns as follows.
11. With respect to the contempt application, the Court returns as follows:
- a. The dispute in the instant proceeding was about registration of a CBA between the KCGWU and the employer, the 1st respondent company. The matter was rested with finality with the ruling delivered by M. Onyango J on 15.01.2021. The joinder as prayed for appears misconceived as there is nothing left of the dispute in issue – registration of a CBA, for determination. The Court finds that in that view, the proposed joinder will not serve any purpose.
 - b. As urged for the KCGWU, the applicant appear not to exist as a duly registered union and per findings of Mwaure J in the cited case. Further, the other four mentioned applicants have not been identified. It then appears that the applicants are at large or do not strictly exist in law.
 - c. The applicants have not shown the particulars of the alleged contempt with respect to the decision herein that the CBA subject of the proceedings between the KCGWU and the employer company would not be registered. The alleged contempt is as well alleged to relate to decisions in other suits. The submission that the contempt proceedings ought to be commenced in those other suits is found valid.
 - d. The foregoing findings lead to the Court to return that the application for joinder and contempt will fail.
12. Turning to the application for review the Court finds as follows:
- a. As already found herein above, the dispute in the instant proceedings for registration of a CBA was primarily whether the CBA between the KCGWU and the respondent would be registered. The final finding was that it would not be registered. The Court considers that the refusal by the Court to register the CBA was specific to the parties to that CBA, the applicant union KCGWU and the employer company. In arriving at that finding the Court was guided with other findings by the Courts including the Court of Appeal that the unionisable employees of the water and sewerage company would not belong to the KCGWU. The decisions referred to in the ruling by M. Onyango J related specific disputes and specific material times and with respect to specific parties and would apply accordingly within the terms of the orders per prevailing circumstances and facts.
 - b. Thus, the Court considers that in event of change of material facts as to sectors of representation, the parties herein would be entitled to pursue their rights in accordance with the new causes of action and in specific cases as they will arise.



- c. As submitted and urged in the grounds of opposition, other than for the clarification above, it appears that indeed the applicant has not disclosed ground for review by way of fresh evidence or error apparent on the ruling and order therefrom as subject of the review application.
 - d. The upshot is that new causes of action such as whether rights of employees are being undermined in one way or the other or there are changed circumstances with new causes of action, then the proper path would be to file fresh and appropriate legal proceedings and not a review as now applied for.
 - e. The application would be determined accordingly.
13. While making the findings, the Court reckons the fluidity and changing circumstance that may necessarily precipitate new horizons and implications for the parties. Thus in *Wajir Wasco Limited alias Wajir Water & Sewerage Company & another v Mohamed & 2 others* (Civil Appeal E396 of 2023) [2024] KECA 937 (KLR) (2 August 2024) (Judgment) Neutral citation: [2024] KECA 937 (KLR) the Court of Appeal (PO Kiage, JM Mativo & PM Gachoka, JJA) held thus “31. A reading of the provisions of the law cited above and the shareholding of the 1st appellant highlighted earlier leaves no doubt that the 1st respondent is county government entity. In fact, the salaries earned by the respondents are drawn from the 2nd appellant’s funds as evidenced by their pay slips annexed which they annexed to their affidavit in support of their case. Why is the 2nd respondent paying them if they are not its employee or of the 1st respondent is not an entity owned by the 2nd respondent? It is also uncontroverted that the respondents’ salaries were stopped by the 1st appellant in October 2022 and all the respondents were summoned to appear at its head office on 15th December 2022 for an internal human resource audit. Following the audit, the respondents’ salaries were stopped, which prompted the respondents to approach the ELRC vide Petition No. E076 of 2023. One may also ask why the respondents sued the 2nd respondent if at all it had nothing to do with their employment.” By that holding, the Court of Appeal found that certainly, the employees of water and sewerage companies were employees of the County Governments and are subject to appeal procedures before the Public Service Commission with respect to human resource decisions they may wish to challenge and, prior to moving to Court, they ought to appeal to the Commission just like the public officers serving in the departments of the county governments. Moving forward, it appears to the Court that the employees of the water and sewerage companies are as well employees of the county governments. The appropriate union to represent the employees will need to be determined within the parameters of the employees’ right to associate and collectively bargain as well as considerations of the best interests of strong unionism for highest positive impact of trade union representation in the involved sector of county governments’ public service. As the Court of Appeal found, if employees of the water and sewerage companies are as well employees in the county governments’ public service, strong union movement for highly impactful representation will favour one union in the sector but which decision is best left to the various players in the sector, to be arrived at within the mechanisms of the right to associate and collectively bargain per the established law and best unionism practices.
14. The Court has considered the nature and circumstances of the applications involving the trade unions in a dynamic and fluid sector and returns that both applications will be determined as disallowed and each party to bear own costs.

In conclusion, the applications are determined as disallowed accordingly and each party to bear own costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 29TH MAY, 2025



**BYRAM ONGAYA
PRINCIPAL JUDGE**

