



**Kenya Electrical Traders and Allied Workers Union v Kenya Electricity Transmission Limited (Cause E1060 of 2023) [2025] KEELRC 1491 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1491 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E1060 OF 2023**

**S RADIDO, J  
MAY 22, 2025**

**BETWEEN**

**KENYA ELECTRICAL TRADERS AND ALLIED WORKERS  
UNION ..... CLAIMANT**

**AND**

**KENYA ELECTRICITY TRANSMISSION LIMITED ..... RESPONDENT**

**RULING**

1. For determination is a Motion dated 17 February 2025 by the Kenya Electrical Trades & Allied Workers Union (the Union) against Kenya Electricity Transmission Co Ltd (the Respondent) seeking orders:
  - i. ...
  - ii. That the Court be pleased to issue an order of mandamus compelling the Respondent to provide the Conciliator with documents enumerated in the Conciliator’s correspondences dated 1<sup>st</sup> October 2024 and 20<sup>th</sup> November 2024, as well as the Progress Report dated 2<sup>nd</sup> October 2024, within 7 days.
  - iii. That this Court be pleased to issue directions that the census ordered by this Honourable Court on the 22<sup>nd</sup> May 2024 be conducted by way of secret balloting in all of the Respondent’s stations.
  - iv. That the costs of this application be provided for.
  - v. That the Honourable Court be pleased to exercise its inherent power and issue any other order in the interest of justice.
2. The grounds in support of the Motion were that the Court had referred the parties to conciliation on 22 May 2024 with instructions to conduct a census; the Conciliator had requested the Respondent to provide him with copies of payroll for November 2022, July 2024; minutes of a verification meeting



- held on 9 February 2023; list of employees in management positions; list of employees who had withdrawn from the Union and list of employees registered with the Union but the Respondent had declined; the Respondent had impeded the census exercise and that the Respondent stood to suffer no prejudice.
3. The Union filed its submissions on 28 February 2025, reiterating the assertions in the supporting affidavit.
  4. The Respondent filed a replying affidavit sworn by its Human Resources Services Manager on 17 March 2025.
  5. In the affidavit, it was deponed that the Respondent had appeared before the Conciliator 3 times; that during the meeting on 18 December 2024, the following records were submitted, payroll for November 2022, payroll for July 2024, list of employees who had withdrawn from the Union, list of employees registered with the Union and minutes of the verification exercise conducted on 9 February 2023; that the Union and Conciliator had rejected a proposal for the census to be conducted at the head office; that conducting a census at the head office would not lead to any extra costs; that a previous census had been conducted by relying on only records; that the Conciliator could not determine the level of unionisation; that the Union was attempting to introduce new evidence through the Conciliator; the Conciliator had made false statements thus exhibiting bias and that the Respondent had pulled out of the exercise.
  6. When the parties appeared before this Court on 18 February 2025, the Respondent's advocate informed the Court that it had complied with the Conciliator's request and supplied him with all the records he wanted.
  7. On the basis of the information given from the bar, the Court directed the Respondent to file in Court before 25 March 2025, an affidavit exhibiting the documents stated to have been given to the Conciliator (the affidavit was filed on 1 April 2025).
  8. The affidavit exhibited the following records:
    - i. Staff list as of 30 November 2022.
    - ii. Schedule of employees who had withdrawn from the Union.
    - iii. Schedule of Union deductions December 2023.
    - iv. Minutes of verification dated 9 February 2023.
    - v. Staff numbers as of December 2023.
    - vi. Union withdrawal letters.
  9. On 2 April 2025, the Respondent filed Grounds of Opposition to the Union's Motion. In the Grounds, the Respondent asserted that the Union was seeking to introduce new evidence and that the Conciliator had exceeded his mandate.
  10. The Union filed a further affidavit on 15 April 2025 responding to the issues raised by the Respondent in its replying affidavit and Grounds of Opposition (not necessary to relate the issues herein as they are not determinative of the Motion).
  11. The Union did not file supplementary submissions while the Respondent filed submissions on 30 April 2025.
  12. The Court has considered the Motion, affidavits and submissions.



13. When the Cause came up for a hearing on the merits on 22 May 2024, the Respondent sought an adjournment and also requested that the dispute be sent to conciliation and a report be filed in Court.
14. The Court obliged and directed that a Conciliator/Ministry of Labour conciliate and conduct a census and file a report within 45 days. The parties were ordered to share the costs of the exercise equally.
15. The Conciliator issued a progress report dated 1 October 2024.
16. The Conciliator requested the Respondent in the report to furnish him with the following reports:
  - i. Payroll for November 2022.
  - ii. Payroll for July 2024.
  - iii. Minutes of the Union members' verification meeting held on 9<sup>th</sup> February 2023.
  - iv. A list of all employees of the company, along with their designations and job groups.
  - v. A list of all employees in management positions.
  - vi. A list of all employees who have withdrawn from the union membership.
  - vii. A list of all employees registered as union members.
17. Since it is the Court that directed that the dispute be conciliated, it would be unconscionable and in bad faith for the Respondent to fail to cooperate with the Conciliator and purport to withdraw from conciliation.
18. Industrial relations is built on the strength of good faith between employers and trade unions/employees, and it is noteworthy that it is the Respondent that proposed that the dispute be resolved through conciliation.
19. The records requested by the Conciliator are records kept by the Respondent in the ordinary course of business and as required by sections 10, 13, 20 and 74 of the *Employment Act*, 2007.
20. By dint of section 74(2) of the Act, an employer is under an obligation to produce such records for inspection by an authorised officer.
21. In the case at hand, the Conciliator, being a Labour Officer, is an authorised officer and the Respondent is under a statutory duty to provide him with the records he requested for.
22. Even if the Conciliator was not a Labour Officer, the Respondent had the obligation to provide him with the records he requested for by dint of section 67(5) of the *Labour Relations Act*.
23. The Respondent appears to have substantially complied with the request by the Conciliator by placing most of the requested records before the Court.
24. To ensure that the Union has met the recognition threshold in light of the withdrawals, it would be in the mutual benefit of the parties that a census is conducted promptly. The Respondent should not have any reason to fear the entry of the Union in the workplace since a Union has a constitutional right to organise, and the employees have a right to associate and participate in the activities of a trade union of their choice.

## Orders

25. In light of the above, the Court allows the Motion dated 17 February 2025 in the following terms:



- i. An order is hereby issued directing the Respondent to provide the Conciliator with the documents enumerated in the Conciliator's correspondences dated 1<sup>st</sup> October 2024 and 20<sup>th</sup> November 2024, as well as the Progress Report dated 2<sup>nd</sup> October 2024 and placed before the Court on or before 30 May 2025.
- ii. In default, the Conciliator is free to rely on the records placed before the Court.
- iii. An order is hereby issued that the census ordered by this Honourable Court on the 22<sup>nd</sup> May 2024 be conducted by way of secret balloting in all of the Respondent's stations within the next 90 days to establish the level of union representation and membership.

26. The Union to have costs.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 22<sup>ND</sup> DAY OF MAY 2025.**

**RADIDO STEPHEN, MCI Arb**

**JUDGE**

Appearances

For Claimant Onyony & Co. Advocates

For Respondent Lutta & Co. Advocates

Court Assistant Wangu

