



**Kenya Union of Water & Sewerage Employees v Meru Water & Sewerage Company Limited (Cause E026 of 2024) [2025] KEELRC 1327 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1327 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU  
CAUSE E026 OF 2024  
ON MAKAU, J  
MAY 9, 2025**

**BETWEEN  
KENYA UNION OF WATER & SEWERAGE EMPLOYEES ..... CLAIMANT  
AND  
MERU WATER & SEWERAGE COMPANY LIMITED ..... RESPONDENT**

**RULING**

**Introduction**

1. By a Notice of Motion dated 5<sup>th</sup> July 2024, the applicant seeks the following orders:
  1. That this application be certified as urgent, and be heard ex-parte in the first instance.
  2. That this Honourable Court do issue an order to compel the Respondent to deduct and remit to the union Agency fees from the respondent's employees who are not members of the applicant but are covered by the Collective Bargaining Agreement amounting to Kshs.2,640,000/- as at June 2024 to the Claimant's Account Number 0112XXXX200 held at Co-operative Bank, Buru Buru Branch Nairobi pending hearing and determination of this application herein.
  3. That pending hearing and determination of this application and the suit herein, the Honourable Court does issue an order to compel the Respondent to deposit in court amount of Kshs.2,640,000/- as at June 2024.
  4. That the Honourable Court does issue an urgent inter-partes hearing for the determination of this suit.
  5. That the cost of this application be borne by the Respondent.



2. The application is supported by the applicants affidavits sworn on 5<sup>th</sup> July 2024 and 23<sup>rd</sup> September 2024 and it is opposed by the respondent vide a Replying Affidavit sworn by its Managing Director Mr.Patrick Mugendi on 8<sup>th</sup> August 2024.
3. The applicant's case is that it concluded a CBA with the respondent and the same was registered by the court on 11<sup>th</sup> December 2020 as RCA No.99 of 2020. On 29<sup>th</sup> June 2021 the Cabinet Secretary for labour made an order under section 49 of the Labour Relations Act directing the respondent to deduct Agency fee from its unionisable employees who were not members of the claimant but were benefiting from the said CBA. The Agency fee was to be 2% of the employee's basic salary but not below a minimum of Kshs.500. The order was published under Legal Notice No.133 of 29<sup>th</sup> June 2021.
4. The applicant alleged that the respondent disobeyed the order by the Cabinet secretary and as at June 2024, the unremitted Agency fees amounted to Kshs.2,640,000. The applicant prays for the said sum to be remitted to it pending the hearing and determination of the suit. It contended that unless the said sum is remitted by the respondent it will suffer financial embarrassment due to its ballooning debts to its staff, landlord among others.
5. The respondent, however, averred that it complied with the Ministerial order by remitting agency fees for all the employees covered by the CBA, who were not members of the applicant. It further averred that after the lapse of the CBA, the parties never renewed it and members of the claimant resigned leaving only 19 of them which was way below the simple majority required for recognition.
6. As a result of the foregoing, it served the National Labour Board with Notice for revocation of its recognition agreement with the claimant on 24<sup>th</sup> August 2023. The Board has heard the parties and a decision was pending. Accordingly, the respondent contended that it has no obligation, in the circumstances to deduct agency fees from the members who have resigned from the claimant union. Consequently, it prayed for the application to be dismissed with costs.
7. Both sides filed written submissions which basically reiterated the arguments above.

### **Determination**

8. The main issue for determination herein is whether the respondent should remit the sum of Kshs.2,640,000 to the claimant pending the hearing and determination of the suit herein.
9. I have carefully considered the facts and the submissions presented to the court and confirmed that from January 2023 to July 2023, the respondent remitted Agency fees to the claimant. The agency fees was the minimum Kshs.500. There is no evidence of agency fee remittances for the period from July 2021 to December 2022 and the period after July 2023.
10. It is not shown whether the said unremitted agency fees is what adds up to Kshs.2,640,000 being sought pending trial. The said sum is also being sought in the main suit. It follows that, the said sum of Kshs.2,640,000 is subject to prove during the trial of the suit. Granting the prayer for the said sum would therefore be premature and tantamount to condemning the respondent unheard.
11. In view of the foregoing conclusion, I dismiss the Application and direct the parties to fix the matter for hearing in order for the court to make a determination on the reliefs sought. Costs of the motion shall be in the cause.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 9TH DAY OF MAY, 2025.**

**ONESMUS N MAKAU**

**JUDGE**



Order

This ruling has been delivered to the parties via Teams video conferencing with their consent, 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.

**ONESMUS N MAKAU**

**JUDGE**

