



Communication Workers Union of Kenya v Wananchi Group (Kenya) Limited & 3 others (Employment and Labour Relations Cause E024 of 2022) [2025] KEELRC 1390 (KLR) (8 May 2025) (Judgment)

Neutral citation: [2025] KEELRC 1390 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

EMPLOYMENT AND LABOUR RELATIONS CAUSE E024 OF 2022

MN NDUMA, J

MAY 8, 2025

BETWEEN

COMMUNICATION WORKERS UNION OF KENYA CLAIMANT

AND

WANANCHI GROUP (KENYA) LIMITED 1ST RESPONDENT

ISAT AFRICAL KENYA LIMITED 2ND RESPONDENT

SIMBANET COMMUNICATION LIMITED 3RD RESPONDENT

WANANCHI TELECOM LIMITED 4TH RESPONDENT

JUDGMENT

1. The Claimant union filed suit against the 1st, 2nd, 3rd and 4th Respondent together with a notice of motion seeking interim orders and in particular an order that the Respondent be stopped from declaring unionisable employees who are members of the Claimant union Respondent redundant to avoid the Claimant union meeting the required threshold for recognition.
2. The court issued status quo orders pending the hearing and determination of the claim. It is not in dispute that the 2nd, 3rd and 4th Respondents are group members and subsidiaries of the 1st Respondent but all the Respondents are separate corporate legal entities.
3. It is also not in dispute that the Claimant has recruited as its members employees of the 1st, 2nd, 3rd and 4th Respondent and that the Respondents have deducted and remitted union dues to the Claimant union in respect of the employees of the different Respondents.
4. The dispute for resolution is whether the Claimant union has recruited a simple majority of unionisable employees in each of the Respondent’s employment to warrant recognition by each of the Respondents of the Claimant union to represent their employees in collective bargaining and signing



of Collective Bargaining Agreement upon the Claimant union entering into a recognition agreement with each of the Respondents herein.

5. The Claimant has pleaded at paragraph 11 of the statement of claim that on 21/12/2021 the parties had entered into an agreement to the effect that the Claimant had obtained the minimum threshold required for recognition by the Respondents. The Claimant stated that the parties were due to sign the Recognition Agreement during the 2nd week of January 2022. That the Agreement was forwarded to the Respondents on 21st December 2021 for approval and signing pursuant to section 54 of the [Labour Relations Act](#) 2007.
6. That the Respondent frustrated the signing of the Recognition Agreement by stating that some of the recruited members were supervisory staff and declined to sign the agreement.
7. That the Respondent then started issuing redundancy notices to the affected staff. That the conduct amounted to victimization of union members.
8. The claimant submits that the employees of the Respondents have a right to join a union of choice in terms of section 4(1) (b) and (c) of the [Labour Relations Act](#) and Article 41 of [the Constitution](#) of Kenya 2010.
9. That the court grants the Claimant the prayers sought in the statement of claim as follows:
 - a. Determination that the Claimant union have recruited simple majority of unionisable employees of the Respondents.
 - b. An order compelling the Respondents to sign the recognition agreement as forwarded to them on 21st December 2021 within 7 days of determination and thereafter commence the process of collective bargaining within 14 days.
 - c. An order stopping the Respondent from victimizing and or harassing the Claimant union members through redundancy unless the same is done in compliance with the law and due consultation with the Claimant union.
 - d. An order do issue quashing the redundancy notices meted out by the Respondents dated 10th January 2022 and any other date thereof.
 - e. Costs of the suit.

Response by 1st, 3rd and 4th Respondents

10. The 1st, 3rd and 4th Respondents filed statement of response dated 23/2/2022 in which the Respondent admitted that the 2nd, 3rd and 4th Respondents are group members and subsidiaries of the 1st Respondent duly registered under the laws of Kenya to operate in the communication industry in Kenya.
11. The Respondent denies that the Claimant attained simple majority of the Respondents unionisable employees as alleged. The Respondent admitted that the Claimant union has recruited staff members of the Respondents over time including those excluded from joining the union by virtue of the position they hold. That the Respondent has been remitting union dues to the Claimant union via check off system without fail.
12. The Respondents state they did not refuse to sign recognition agreement with the Claimant union but have raised pertinent issues regarding whether the Claimant union has attained majority membership



in each of the Respondent company to warrant each one of them to grant the Claimant union recognition and sign recognition agreement accordingly.

13. The Respondents state that issues raised by Respondents were referred to a conciliator but the Claimant came to court prematurely before the dispute was conciliated upon and resolved or certificate of unresolved dispute was issued to allow parties to come to court. The Respondent denied having agreed to sign recognition agreement on 21/12/ as alleged by the claimant or at all.
14. The Respondents in the submissions to the conciliator dated 26/11/2021, submitted as follows at paragraph 2(b)

“The union has not attained a simple majority of unionisable employees for us to enter into a recognition agreement with them. As per the October, NSSF returns on head count were as follows:”

Company	Headcount	Supervisory	Staff	Unionisable
Wananchi Group (K) ltd (1 st Respondent)	304	85	219	109
Simbanet Ltd (3 rd Respondent)	52	13	39	13
Wanachi Telecom (4 th Respondent)	24	13	11	5
ISAT Africa (2 nd Respondent)	15	3	12	8

15. The Respondents submit that based on the said data, the Claimant union had not met the mandatory threshold for the Respondent to enter into a recognition agreement with them.
16. The Respondent states that all redundancies done by the Respondents were done in good faith and in terms of section 40 of Employment Act, 2007 and denied any engagement in illegal activities.

Process

17. Due to the nature of the dispute, the court made an order on 15/2/2023 as follows:-

“The court deems it important for the Ministry of Labour to conduct a verification exercise in respect of the four (Defendants) companies with a view to establish:

- a. The number of unionisable employees in each company



- b. The number of unionisable employees recruited by the Claimant for purposes of recognition by the Respondent.
 - c. Filing a report with the court within the next 30 days
 - d. Direction be taken on way forward upon receipt of the report by the Minister.
18. The conciliator appointed pursuant to the said court order filed report dated 6/4/2023 in which he considered submission by the union in which the union stated that “Recruitment of the union members from the four companies started in December 2020. As at 20th December 2021, the union had recruited a total of one hundred seventy (170) employees in their membership. Check off forms had been forwarded to the employer for union deductions”.
19. The Respondent on the other hand had submitted to the conciliator as follows:-
- “The four companies are independent legal entities...The four companies have a total work force of three hundred and fifty-five employees (355).
- The workers join and leave the union at will. The supervisors are not eligible to be union membership.
- The union has not attained the simple majority of unionisable members to be accorded a recognition agreement...”
20. The conciliator made a finding inter alia that
- “COWU has the legal mandate under section 54 of the *Labour Relations Act*, 2007 to represent industrial interest of the four companies under the umbrella of wananchi Group Kenya Limited. At the time of reporting this dispute for conciliation the union had recruited the simple majority of workers at Wananchi Group Kenya Limited and ISAT Africa Kenya Limited respectively into their membership. The same is confirmed by a letter dated 21st December 2021 by Tim Kajuma Director HR of Wananchi Group Kenya Limited, which was addressed to Mr. Jacob Gatimu the conciliator therein in this dispute. As at 20th December 2021 a total number of one hundred and seventy (170) had been recruited into the membership of the union. There are no rival unions fighting to represent interests of the company, check-off forms availed to the undersigned confirms that the union has met the requisite threshold. The conciliator Nelson S. Kimeu, in his report then recommended to the court that the parties to this dispute should sign a recognition agreement forthwith to pave way for C.B.A. negotiations.
21. The parties agreed to proceed with this matter on the basis of pleadings not in dispute and submissions to be filed by the parties.

Determination

22. The court has carefully considered the facts not in dispute including the fact that the 1st Respondent is an Umbrella Group corporation named “Wananchi Group Kenya Limited and that the 2nd, 3rd and 4th Respondents were its subsidiaries though different registered limited companies.
23. The court has also found that the Claimant union is the only registered union operating in the industry in which the four Respondents operated.



24. It is also not in dispute that the Claimant union had continuously continued to recruit employees of the four Respondents as its members.
25. It is also not in dispute that the Respondents have continued to deduct union dues from their employees and remitted the same to the Claimant union. The court finds that the report by the conciliator made pursuant to an order of the court dated 16/2/2023 materially complied with the said order by receiving submissions from the union and the Respondents and by obtaining important information in terms of a letter dated 21st December 2021 written by Director HR of the 1st Respondent Wananchi Group Kenya Limited which letter had earlier been addressed to Mr. Jacob Gatimu the conciliator who had been earlier appointed.
26. From this letter, the Respondents provided data confirming that as at the time of reporting the dispute for conciliation the Claimant union had met the threshold for recognition at Wananchi Group Kenya Limited and ISAT Africa Kenya.
27. The court has considered the said data, provided by the Respondents themselves which confirms that the claimant union had recruited as at the time 109 unionisable employees of Wananchi Group (K) Ltd out of 219 staff not in the supervisory category which constitute a simple majority of all unionisable employees in the employment of the 1st Respondent.
28. The data perused by the court with respect to the 2nd Respondent ISAT Africa was that the Claimant union had recruited 8 members of staff out of 12 unionisable staff which constituted more than simple majority of all unionisable employees.
29. The court finds that the circumstances described by the court in Kenya Union of Commercial Food and Allied Workers, Eastleigh Mattress Ltd (Eastmatt) [2017} eKLR does not apply in the present matter. The labour officer did a verification exercise in compliance with the court order.
30. Accordingly, going by the evidence before court including the report by the Ministry of Labour, facts admitted by both parties and therefore not in dispute, the court finds that the Claimant has met the requirement of section 54 of *Labour Relations Act* in respect of the 1st and 2nd Respondents.
31. The court therefore orders the 1st and 2nd Respondents to recognize the Claimant union and sign a recognition agreement with the Claimant union in respect of the two companies.
32. The Claimant had not met the threshold in respect of the 3rd and 4th Respondents having recruited only 13 employees of the 3rd Respondent out of 39 unionisable employees and only 5 employees out of 11 unionisable employees of the 4th Respondent.
33. Accordingly, the Claimant's case succeeds in respect to the 1st and 2nd Respondents only.
34. The court makes the following final orders in favour of the Claimant as against the 1st and 2nd Respondents: -
 - a. The Claimant union has recruited simple majority of unionisable employees of the 1st and 2nd Respondent.
 - b. The 1st and 2nd Respondents are compelled to sign the recognition agreement forwarded to them on 21st December 2021 within 14 days of the judgment and commence collective bargaining in terms of the said agreement.
 - c. The rest of the prayers sought by the Claimant union lack merit and are dismissed. However, if the Respondents deem it suitable for good order to sign a recognition agreement in respect



of all the four Respondent companies, nothing stops the 1st Respondent being an umbrella group company from doing so on behalf of the 3rd and 4th Respondents. The court leaves that to the discretion of the Respondents

d. The Respondents to meet the costs of the suit

DATED AT NAIROBI THIS 8TH DAY OF MAY 2025

MATHEWS NDUMA

JUDGE

Appearance:

Kale Maina & Bundotich Advocates LLP for Claimant union

Kamotho Njomo & Company Advocates for the Respondent

Mr. Kemboi – Court Assistant

