



Bakery, Confectionery, Food Manufacturing and Allied Workers Union & 3 others v Dessra Ventures Limited (Cause E052 of 2024) [2025] KEELRC 1254 (KLR) (2 May 2025) (Ruling)

Neutral citation: [2025] KEELRC 1254 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E052 OF 2024**

**AK NZEI, J
MAY 2, 2025**

BETWEEN

**BAKERY, CONFECTIONERY, FOOD MANUFACTURING AND ALLIED
WORKERS UNION CLAIMANT**

AND

**RAPHAEL NDOLO MUTISYA 1ST GRIEVANT
ONESMUS MAWIOO 2ND GRIEVANT
RICHARD MUTIE 3RD GRIEVANT**

AND

DESSRA VENTURES LIMITED RESPONDENT

RULING

1. On 20th December, 2024, this Court delivered a Ruling pursuant to the Respondent’s Notice of Motion dated 12th July, 2024, and pronounced itself as follows:-

“14. The Claimant has not demonstrated that there existed or there exists a Recognition Agreement between itself and the Respondent/Employer; and has not even made a pleading in that regard. In the absence of a Recognition Agreement signed by the Claimant/Trade Union and the Respondent/Employer, the two parties have no legal relationship on the basis of which a suit can be founded pursuant to the provisions of the *Labour Relations Act*. The two parties are, indeed, strangers, and the suit herein was filed by the Claimant without any form of locus standi.



15. In sum, the Respondent's Notice of Motion dated 12th July, 2024 is allowed in terms that the suit herein is hereby struck off with no orders as to costs."
2. The Court's record shows that on 26th December, 2024, the Claimant Trade Union filed a Notice of Appeal stating that it intended to appeal to the Court of Appeal against the whole of this Court's said Ruling. The Court's record herein further shows that on 15th January, 2025, the Claimant filed an evenly dated Notice of Withdrawal that is worded as follows:-
- "Notice of withdrawal
- Take notice that bakers confectionery food manufacturers and allied workers union, the above-named Claimant, withdraws the Notice of Appeal dated 26th December, 2024 and relinquish the appellate rights attendant to the filing of the said notice with no orders as to costs."
3. The said Notice of Withdrawal is shown to have been meant to be served on the Respondent's Advocates herein.
4. On 22nd January, 2025, the Claimant filed a Notice of Motion dated 20th January, 2025 seeking the following Orders:-
- a. That the Court be pleased to set aside, vary and review the Ruling delivered on 20th December, 2024.
 - b. That the Court be pleased to reinstate the Claimant/Applicant's suit dismissed by the ruling delivered on the 20th December, 2024.
 - c. That costs of the application be provided for.
5. The application sets out on its face the grounds on which it is based, and is anchored on a supporting affidavit of Amos Karisa, the Claimant's Deputy Secretary General, sworn on 22nd January, 2025, and is expressed to be brought pursuant to Article 159(2) of *the Constitution* of Kenya 2010 and Rule 74 of the Employment and Labour Relations Court (Procedure) Rules 2024, among other provisions of the law.
6. It is deponed in the aforementioned supporting affidavit:-
- a. that the Claimant and the Respondent executed a Recognition Agreement on 26th January, 2022, to which the said deponent bore witness; and which was sealed and dated using the Respondent's official seal.
 - b. that the Agreement was also attested by Abdulkarim Hersi as a representative of the Respondent.
 - c. that Danchel Mwangale and Amina Osman represented the Applicant and the Respondent respectively in the said Recognition Agreement.
 - d. that Amina Osman fraudulently swore to non-existence of the Recognition Agreement at paragraph 2 of the affidavit sworn in support of the application dated 12th July, 2024, since she was party to the said agreement.
 - e. that Amina Osman concealed and suppressed evidence on existence of the Recognition Agreement, with the help of her advocates, in order to gain a Ruling in her favour; and misrepresented facts to this Court.



- f. that a copy of the Recognition Agreement had been sent by the Claimant to its Advocates herein at the time of filing the suit herein, but was misplaced and was therefore not part of the documents filed in this Court; a fact that the Claimant/Applicant did not become aware of until this Court's Ruling was delivered on 20th December, 2024.
- g. that the Claimant/Applicant has now sent another copy of the Recognition Agreement to its Advocates.
7. Documents annexed to the aforesaid supporting affidavit include a copy of a Recognition Agreement shown to have been duly executed by the Claimant and the Respondent herein on 26th January, 2022 as deponed to in the aforementioned affidavit of Amos Karisa.
8. The application is opposed by the Respondent vide a replying affidavit of Amina Abdulla Osman sworn on 11th February, 2025, but which does not mention the existence or otherwise of the Recognition Agreement said to have been signed by both parties herein on 26th January, 2022.
9. This Court's power to review its orders and decrees flows from Section 16 of the [Employment and Labour Relations Court Act](#) and Rule 74 of the Employment and Labour Relations Court (Procedure) Rules 2024.
10. Rule 74 of the Employment and Labour Relations Court (Procedure) Rules 2024 provides as follows:-
- “(1) A person who is aggrieved by a decree or order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the Judgment or ruling –
- a. if there is discovery of a new and important matter or evidence which, despite the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order was made;
 - b. on account of some mistake or error apparent on the face of the record;
 - c. if the Judgment or ruling requires clarification; or
 - d. for any other sufficient reason.
- (2) The application for review of a decree or order of the Court under sub-rule (1) shall be made to the Judge who passed the decree or made the order sought to be reviewed or to any other Judge if that Judge is not attached to the Court station.
- (3) A party seeking review of a decree or order of the court shall apply to the Court by way of notice of motion supported by an affidavit and shall file a copy of the Judgment or order to be reviewed.
- (4) The Court shall, upon hearing an application for review, deliver a Ruling allowing or dismissing the application.



- (5) Where an application for review is granted, the Court may review its decision to conform to the findings of the review or quash its decision and order that the suit be heard again.”
11. As already stated elsewhere in this Ruling, the Claimant/Applicant withdrew the Notice of Appeal filed herein before filing the application herein. Rule 83 of the Court of Appeal Rules (2022) permits a party who has filed a Notice of Appeal to withdraw such notice by a notice in writing, to all the parties who have been served. The validity and service of the Notice of Withdrawal filed herein has not been challenged by the Respondent. The Claimant/Applicant’s application for review is, therefore, properly before this Court.
12. The single issue for determination herein is whether the review order sought by the Claimant/Applicant is merited.
13. It has been deponed on behalf of the Claimant/Applicant that although a copy of the Recognition Agreement signed by the parties herein on 26th January, 2022 was forwarded to the Claimant’s Advocates at the time of filing the suit herein, the same was misplaced by the Advocates, and was therefore not among the documents filed in this Court. I find this to be a sufficient reason on the basis of which a review order can be granted. In my view, the words “for any other sufficient reason” as used in Rule 74(1)(d) of this Court’s Rules confer unfettered discretion to this Court to grant review orders based on such sufficient reasons as the Court may deduce from the facts of a case as presented by the parties therein. There cannot be uniformity on what “a sufficient reason” is, but what amounts to a sufficient reason will depend on the facts and circumstances of each particular case.
14. I find merit in the Notice of Motion dated 20th January, 2025; and the same is hereby allowed in the following terms:-
- a. This Court’s Orders contained in the Ruling delivered on 20th December, 2024 are hereby reviewed, and are quashed.
 - b. The Claimant/Applicant’s suit herein is hereby reinstated, and shall be fast-tracked and set down for hearing.
 - c. Costs of the application shall be in the suit.
15. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 2ND DAY OF MAY 2025

AGNES KITIKU NZEI

JUDGE

Order

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

Appearance:

Miss Achieng for the Claimant

Miss Wambui for the Respondent

