



Amalgamated Union of Kenya Metal Workers v Shankar Electronics (Cause E064 of 2025) [2025] KEELRC 2403 (KLR) (29 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2403 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E064 OF 2025
K OCHARO, J
JULY 29, 2025**

**BETWEEN
AMALGAMATED UNION OF KENYA METAL WORKERS CLAIMANT
AND
SHANKAR ELECTRONICS RESPONDENT**

RULING

Background

1. By a Notice of Motion Application dated 10th June 2025, the Claimant seeks the following orders:
 - I. That under Section 74 of the *Labour Relations Act*, this application on a lockout of the Applicant Union from participating in the ongoing negotiations of the sale of the business company be certified as extremely urgent and be heard ex parte in the first instance.
 - II. That this Honourable Court do issue an order staying the ongoing negotiations for the sale of the company's business until this matter is heard and determined.
 - III. That this Honourable Court do issue an order that any further negotiations to sell the company's business be conducted in the presence of a representative of the Applicant Union.
 - IV. That the Honourable Court do issue an order restraining the Respondent or his agents from intimidating, threatening, harassing and coercing employees from withdrawing their membership from the Applicant Union.
 - V. That the Honourable Court be at liberty to issue any order that it deems fit.
 - VI. That the main claim be heard and determined on a priority basis.
2. The Application is anchored on the grounds set out on the face of the application and those in the supporting affidavit of Rose Omamo, the General Secretary of the Applicant trade union.



3. The Respondent opposes the application on the basis that the grounds set out on the notice of preliminary objection dated 12th June 2025.
4. Following directions by this Court, the parties filed their respective submissions. The Claimant filed their submissions dated 5th July 2025, while the Respondent filed theirs dated 8th July 2025.

The Application.

5. The Applicant states that the crux of the matter before this Court is the refusal by the Respondent to engage the Applicant Union in the negotiations for the sale or change of Directors of the Respondent company.
6. The Applicant has both a valid Recognition Agreement and Collective Bargaining Agreement with the Respondent.
7. It is asserted that there have been very secret, clandestine and malicious ongoing negotiations for the sale or change of Directorship of the Respondent Company.
8. When the Applicant's Mombasa branch got wind of the happenings, they wrote a letter to the Respondent seeking a joint meeting, and proposed 29th May 2025 as the date for the meeting.
9. The Applicant states further that upon receipt of the letter, the Respondent sent an email to the Applicant admitting the ongoing negotiations, but took a position that the Applicant Union can only be briefed after the conclusion of the negotiations.
10. It states that it sees no rationale in the position taken by the Respondent, as upon the conclusion of the negotiations, there would not be any interests of employees to be represented.
11. The branch escalated the matter to the Applicant's Headquarters. Subsequently, the Union's Headquarters wrote a letter proposing a joint meeting to be held on 3rd June 2025. The Respondent declined the invitation.
12. On the strength of the recognition agreement and the Collective Bargaining agreement, they are representatives of the Respondent's unionizable employees. The Respondent's action of denying them a chance to be involved in the ongoing business sale negotiations is suggestive of a malicious, sinister and ulterior motive.
13. The Respondent has acted contrary to Article 41 of the [*Constitution of Kenya* 2010](#).
14. Within the meaning of Section 74 of the [*Labour Relations Act* 2007](#), this matter is properly before this Court as it relates to the category of issues set out thereunder.

The Response

15. The Respondent asserted that this Court lacks the jurisdiction to determine this matter on the account that the suit has been prematurely commenced and that the proceedings herein lack legal procedural propriety.

The Claimant's Submissions

16. The Claimant/ Applicant asserts that despite the directions by this Court that the Respondent file and serve a replying affidavit, they filed none.
17. The Respondent initiated negotiations and continued to negotiate the sale of its business without informing its employees or the Applicant Union. As representatives of the employees, they should be



involved in the negotiations to ensure that the interests of the employees are adequately protected. At the conclusion of the process, there should be a clear decision on which party, the employer [seller] or the Purchaser, is liable for any liabilities owed to the employees.

The Respondent's submissions

18. The Respondent submits that the success or otherwise of the Applicant's application herein turns on whether or not the suit and the application herein have been prematurely filed.
19. The matter before this Court is a trade dispute per the definition of a trade dispute under Section 62 of the *Labour Relations Act*, 2007. The Section provides for a dispute resolution mechanism that should be engaged first before a party invokes the jurisdiction of this Court. It provides for conciliation.
20. It is imperative that where a dispute resolution mechanism exists outside the Courts, the mechanism should be exhausted first before the jurisdiction of the Courts is invoked. To support this submission, reliance was placed on the cases, *Speaker of the National Assembly v Karume* [1992] KLR, and ELRC Cause No. 755 of 2019-*Kenya National Union of Teachers v Nancy Njeri Macharia & Another*.
21. The Respondent submits that the Claimant has only made bare assertions on the sale, without placing forth evidence to establish the same. As they are the ones alleging, the duty is upon them under section 107 of the *Evidence Act* to prove the assertion. Prove that they haven't done.
22. The application should be dismissed as it is destitute of merit.

Analysis and Determination.

23. Undeniably, the circumstances surrounding the sale and transfer of businesses as going concerns, along with their implications for employee services, have not been codified in Kenya. This absence has led to a legal debate regarding whether workers are automatically transferred to the new owner upon the transfer of a business as a going concern, or whether such transfer can only occur where there is a prior agreement between the transferor and the transferee indicating that the workers, or a majority of them, are integral to the transaction.
24. A corollary to the aforementioned debate is the question: when, and to what extent, does a trade union that has entered into a recognition agreement and a Collective Bargaining Agreement with the transferor become involved in the negotiations surrounding the sale or transfer of a business?
25. I have carefully considered the Claimant's pleadings; undoubtedly, the abovementioned questions present the central issues that must be addressed in the instant matter. Weighing these issues against the orders sought in the Claimant's application, this Court is impelled to be deliberately mean in the manner it presents this ruling to avoid the risk of it being seen as having a predetermined mind on the substantive suit.
26. Collective Bargaining is all about representativeness. Recognition Agreements and Collective Bargaining Agreements give a trade union[s] the authority to engage on behalf of unionisable employees with the employer. However, the authority, in my view, is not an authority at large, enabling them to engage or desire to engage the employer or organisation of employers on every matter, including business matters and decisions, that do not directly affect the employees' terms and conditions of work. The authority permits them to pursue engagement and engage on matters of human capital.



27. Undeniably, a trade union with a Recognition Agreement and an existing Collective Bargaining Agreement between it and an employer has the right to receive information, and the employer has the obligation to supply them with information that would facilitate effective collective bargaining.
28. I note that the Claimant wants to be involved in the entire negotiation process between the Respondent and the intended purchaser. It is commonplace that the entire process will entail matters that would pertain to those beyond human resources. It is on this premise that this court finds it inequitable and unjust to shackle parties who are negotiating a deal for the sale business in the manner sought by the Claimant/Applicant.
29. However, acknowledging the Claimant's right to information stated hereinabove, and to enable them take timely action if need be on behalf of the unionisable employees, this Court hereby directs the Respondent to within 21 days of this ruling, supply them with information pertaining whether the employees will or not automatically transit into the employment of the new owner upon transfer of business, and if not, how they will they be disengaged from their employment?
30. The Respondent deliberately didn't file any replying affidavit against the Claimant's application. The factual issues raised in the affidavit in support of the application needed to be controverted through a replying affidavit. In the absence of any, this Court finds no difficulty in finding that the factual matters, including the stated ongoing negotiations, are unrebutted. The Respondent's submissions that the Claimant didn't prove the fact, therefore, stand on moving sand.
31. In the premises, the Claimant's application is hereby only allowed in the terms set out in paragraph 29, above.
32. The costs of the application shall be in the cause.
33. Orders accordingly.

READ, SIGNED AND DELIVERED ON THIS 29TH DAY OF JULY 2025.

OCHARO KEBIRA

JUDGE

