



**Kenya Concrete Structural Ceramics, Tiles, Woodplys & Interior Design
Workers Union v Cibien Engineering Construction Company Limited (Cause
E805 of 2023) [2025] KEELRC 2240 (KLR) (25 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2240 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E805 OF 2023
SC RUTTO, J
JULY 25, 2025**

BETWEEN

**KENYA CONCRETE STRUCTURAL CERAMICS, TILES, WOODPLYs &
INTERIOR DESIGN WORKERS UNION CLAIMANT**

AND

**CIBIEN ENGINEERING CONSTRUCTION COMPANY
LIMITED RESPONDENT**

JUDGMENT

1. At the outset, it is worth pointing out that the only residual issue left for determination at this juncture is the question of recognition of the Claimant union by the Respondent. The other issues were resolved by the Court through the Ruling delivered on 26th July 2024.
2. Through a Statement of Claim dated 4th October 2023, the Claimant avers that it recruited into its membership 30 employees of the Respondent who subsequently acknowledged their membership to the Union by way of Check-off forms. It is the Claimant's contention that the Respondent refused to accord it Recognition so as to pave way for the commencement of negotiations of a Collective Bargaining Agreement (CBA).
3. To this end, the Claimant has asked the Court to direct the Respondent to immediately enter into a recognition agreement with the Union and to commence CBA negotiations within 30 days from the date of signing the recognition agreement.
4. The Respondent has opposed the Claim through its Response dated 20th April 2025. According to the Respondent, it is a stranger to the Claimant's alleged efforts to seek a recognition agreement with it.
5. The Respondent has further averred that the Claimant has failed to demonstrate that it is eligible for recognition.



6. It is the Respondent's case that the Claimant's membership among its employees falls far short of the simple majority threshold set by Section 54 of the *Labour Relations Act*. According to the Respondent, out of a staff complement of 54 unionisable employees, the Claimant's membership consists of only 25 employees, a mere 47.7% which is below the threshold envisaged under the Act.
7. Consequently, the Respondent has asked the Court to dismiss the Claim herein with costs.
8. In response to the Respondent's Response, the Claimant filed a Further Affidavit sworn on 24th April 2025 by Dishon Angoya in which he has averred that the Claimant duly recruited a simple majority of the Respondent's employees and sent a copy of a proposed Recognition Agreement to the Respondent on 18th February 2025 for them to give their input and conclude the same.
9. Mr. Angoya further avers that the Respondent, having been served with the proposed Recognition Agreement, has not reverted to the Claimant for purposes of signing the Recognition Agreement.
10. It is Mr. Angoya's further assertion that the Respondent admitted vide a letter to the Claimant dated 3rd February 2025, that the Claimant had recruited 28 employees out of 54 Unionisable employees. In Mr. Angoya's view, this number is equivalent to 51.8% which percentage meets the threshold for recognition under the provisions of Section 54 of the *Labour Relations Act*, 2007.
11. On 24th April 2025, both parties herein consented to have the matter determined by way of documentary evidence pursuant to Rule 59 of the Employment and Labour Relations Court (Procedure) Rules, 2024.
12. Subsequently, the Court directed the parties to file and exchange written submissions within specified timelines.

Submissions

13. In its submissions, the Claimant has maintained that it has attained the simple majority set out in the *Labour Relations Act*, hence the Court should direct the Respondent to recognize it for purposes of concluding a Collective Bargain Agreement for its members as envisioned under the provisions of Section 57 of the same Act.
14. The Respondent did not file written submissions as the same were missing from the court's physical record and were not traceable on the online portal.

Analysis and Determination

15. As can be discerned from the record, it is evident that the Court is being called to determine whether the Claimant Union has made out a case for recognition by the Respondent under Section 54(1) of the *Labour Relations Act*.
16. The crux of the Claimant's case is that it recruited into its membership, 30 members from the Respondent's workforce but the Respondent has continued to frustrate its efforts in realizing a recognition agreement. It is on this basis that the Claimant has sought an order to compel the Respondent to sign a recognition agreement with it.
17. The Respondent has countered the Claimant's position and is categorical that the Claimant's membership falls below the legal threshold envisaged under Section 54 of the *Labour Relations Act*. The Respondent has further denied the Claimant's assertion with respect to seeking recognition.



18. Worthy to note is that despite its assertions that the Respondent has frustrated its efforts in realizing a recognition agreement, the Claimant did not exhibit a copy of its request for recognition addressed to the Respondent prior to the institution of the suit herein.
19. Indeed, the only correspondence addressed to the Respondent at the material time was with respect to the deduction and remittance of trade union dues. In the said correspondence, there was no mention of recognition. Tied to this, there was no evidence that the Claimant union had forwarded a draft recognition agreement for consideration by the Respondent prior to the institution of this suit. I say so bearing in mind that the email annexed to the Claimant's Further Affidavit sworn on 24th April 2025, forwarding a draft Recognition Agreement to the Respondent was on 18th May 2025, way after the institution of the suit herein.
20. What's more, it is evident that the nature of the trade dispute referred for conciliation by the Claimant was "the refusal to deduct and remit trade union dues". Indeed, this is also the issue in dispute identified by the Claimant in the instant Statement of Claim.
21. What therefore, manifests from the foregoing is that prior to the institution of the Claim herein, the issue of recognition has never been in dispute between the parties. It can very well be said that the issue of recognition is yet to crystallize.
22. For the foregoing reasons, the Court is unable to fault the Respondent for failing to grant the Claimant recognition within the meaning of Section 54 of the *Labour Relations Act*.
23. In the premises, the claim for recognition is disallowed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF JULY 2025.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Mr. Jemo (Union Rep)

For the Respondent Mr. Olunya instructed by Mr. Agingu

Court assistant Millicent

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

