Kudheiha Workers v Jonny's Cleaners and General Care Agency (Cause E022 of 2025) [2025] KEELRC 2237 (KLR) (25 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2237 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE E022 OF 2025

SC RUTTO, J

JULY 25, 2025

BETWEEN

KUDHEIHA WORKERS .... CLAIMANT

AND

JONNY'S CLEANERS AND GENERAL CARE AGENCY .... RESPONDENT

JUDGMENT

1. Vide a Statement of Claim dated 16th January 2025, the Claimant seeks the following reliefs:

    i. That the Claimant has met the threshold as required by section 54 (1) of the *Labour Relations Act* 2007 for recognition and collective bargaining purposes.

    ii. That the Respondents by themselves, their board and/or responsible officers to sign the recognition agreement with the Claimant without further delay.

    iii. That the Respondent by themselves, their board and/or responsible officers commence, conclude and sign a collective bargaining agreement without further delay.

    iv. That the Respondent has violated the fundamental rights and freedoms of the Claimant's members.

    v. That the Respondent by themselves, their board and/or responsible officers to stop and desist unfair labour practices of intimidation, harassment and victimization of employees in the Claimant membership.

    vi. Cost of the suit is awarded to the Claimant.

    vii. Any other remedy that the honourable Court may deem fit and just.

2. The gist of the Claimant's case is that between 30th May 2024 and 7th June 2024, it organized and recruited 30 members out of a possible 30 employees from the Respondent who willingly joined the Union. The recruited members filled out check-off forms.

3. According to the Claimant, this translates to 100% of the Respondent's total workforce hence surpassing the minimum threshold pursuant to Section 54(1) of the *Labour Relations Act* for purposes of recognition. However, the Respondent has refused to accord it recognition.

4. The Respondent opposed the Claim through a Reply dated 20th February 2025, in which it avers that its total workforce comprises 69 staff and the alleged 30 members of staff recruited to join the Claimant Union are way below the minimum threshold required by law under Section 54(1) of the *Labour Relations Act*. Consequently, the Respondent has asked the Court to dismiss the Claim with costs.

5. During the hearing which proceeded on 2nd April 2025, both parties called oral evidence.

Claimant's Case

6. The Claimant called oral evidence through Patrick Karanja, who testified as CW1. Mr. Karanja, who identified himself as the Claimant's Branch Secretary, adopted his witness statement and the documents filed on behalf of the Claimant to constitute his evidence in chief.

7. Mr. Karanja averred that the Claimant forwarded a request to the Respondent on 12th June 2024 to begin the process of union dues deductions, as per the check-off system outlined in the *Labour Relations Act*. This request was ignored by the Respondent.

8. Mr. Karanja added that the Claimant sent a recognition agreement to the Respondent for signature, but this too was disregarded.

9. That in an attempt to resolve the issue amicably, Mr. Karanja personally reached out to the Respondent on 30th October 2024, urging them to engage in social dialogue and resolve the outstanding issues related to union recognition and the signing of the CBA. Despite the Claimant's efforts, the Respondent continued to ignore their communications and failed to engage in constructive dialogue.

10. Mr. Karanja further averred that he was made aware by employees of the Respondent who are members of the union that the Respondent has become disgruntled and his actions are now geared at having the employees being subjected to harassment, intimidation, and threats of termination. Mr. Karanja cited a letter dated 8th January 2025, in which the Respondent threatened its employees with negative consequences for continuing their union activities, including jeopardizing their contract renewals.

11. In Mr. Karanja's view, these actions amount to clear discrimination against the employees based on their union membership and are in violation of their constitutional rights, specifically Articles 27, 36, and 41 of *the Constitution* of Kenya, 2010.

12. Mr. Karanja further averred that the Respondent's actions have created a hostile and unsafe work environment for the employees who are union members. In Mr. Karanja's view, this environment is aimed and designed to coerce employees into resigning from the union.

13. That as the Branch Secretary, Mr. Karanja has witnessed employees expressing fear for their job security and future employment due to their participation in union activities.

14. Mr. Karanja avers that if the Respondent's actions are allowed to continue, the Claimant's members will continue to suffer discrimination, harassment, and unfair treatment.

Respondent's Case

15. The Respondent called oral evidence through Mwihari Karanja, who testified as RW1. He identified himself as the Respondent's Director and equally, he adopted his witness statement to constitute his evidence in chief. He further produced the documents filed on behalf of the Respondent as exhibits before Court.

16. RW1 averred that the Respondent is a cleaning agency that had been awarded a three (3) year cleaning contract by the Oshwal Education and Relief Board. That in this regard, the Respondent hired on a contract basis, casual laborers to enable it to execute the duties under the cleaning contract.

17. According to RW1, the Respondent employed 69 employees, all on contract basis.

18. That the Contract between the Respondent and Oshwal Education and Relief Board has already expired and consequently, the Respondent's contract with the laborers has met the same fate.

19. RW1 further averred that he has written to Oshwal Education and Relief Board requesting for renewal of the contract but the Board is yet to respond to his request.

20. That as it stands, the Respondent does not have a valid Contract and neither do the workers, hence he believes the Court cannot grant the orders as requested by the Claimant where no employment contract exists.

21. According to RW1, it is a misrepresentation of facts to this Court for the Claimant to claim that the workers are being intimidated, harassed, victimized, or warned to quit work. On this score, RW1 avers that he has always done his best in making sure that his workers' plights are taken care of in the execution of their duties to the expectation of his boss, who is Oshwal Education and Relief Board. That among other initiatives he takes to boost his workers' morale include: giving salaries that are way above the minimum limit of government directives; giving each laborer a one and a half day off every week; giving each laborer a one month or at least 21 days leave every year; giving every laborer an monetary compensation for every hour worked overtime; donating his personal cash to laborers when one is faced with personal predicaments; and giving fully paid offs, leaves, even to attend important personal issues.

22. That without prejudice to the foregoing, the prayers sort by the Claimant are unenforceable as the employment contract between the contractee and the contractor has already expired and unless the contractee renews the same, he will be jobless and so will be the workers, a fact that has already been communicated to the Claimant way before they file this suit.

23. That as it stands now and having no valid contract either with his employer or his workers, he is unable to sign any recognition agreement as prayed by the Claimant nor is he able to enter into any Collective Bargaining Agreement or effect deductions or remittances.

24. According to RW1, he does not have any problem with any of his staff taking any portion of his/her salary to any union.

Submissions

25. Upon close of the hearing, both parties filed written submissions. The Court has given due consideration to the said submissions.

26. In its submissions, the Claimant has urged the Court to compel the Respondent to comply with its statutory and constitutional obligations and to protect the fundamental rights of employees to union representation and fair labour practices. In support of its position, the Claimant has placed reliance

on the case of *Kenya Union of Commercial Food & Allied Workers v Lake Treasure Ltd (Cause E073 of 2023)*.

27. On its part, the Respondent has submitted that it does not have a problem recognizing the Claimant Union as long as it is properly constituted. The Respondent added that its cleaning contract has not been renewed.

Analysis and Determination

28. Having considered the pleadings, the evidence by both parties as well as the rival submissions, the Court has singled out the following issues for determination: -

    a. Whether the Claimant Union has proved that it has attained the threshold for recognition under Section 54(1) of the *Labour Relations Act*;

    b. Whether the Claimant is entitled to the reliefs sought.

Recognition agreement?

29. It is the Claimant's case that it recruited all the Respondent's employees into its membership. According to the Claimant, this number represents 100% of the Respondent's workforce.

30. Opposing the Claimant's assertions, the Respondent avers that the Claimant has not met the threshold of a simple majority to warrant the parties sign a recognition agreement. In this regard, the Respondent contends that it has 69 employees in its workforce, hence the employees allegedly recruited by the Claimant are way below the threshold set out under the law.

31. Section 54(1) of the *Labour Relations Act* spells out the conditions under which an employer is obligated to recognize a trade union for collective bargaining purposes. In this regard, a trade union must represent a simple majority of unionisable employees in order to attain recognition by an employer.

32. Therefore, the computation of a simple majority is based on the total number of unionisable employees in the employer's workforce against the total number of unionisable employees registered by the Union.

33. In this case, it is the Respondent's assertion that it recruited 39 employees from the Respondent's workforce at the material time, hence surpassing the threshold outlined under Section 54(1) of the *Labour Relations Act*. To this end, the Claimant exhibited a check-off form bearing 29 names whom it contends have signed up for union membership. Further exhibited by the Claimant were copies of letters dated 12th June 2024, addressed to the Respondent, requesting for deduction and remittance of trade union dues from the salaries of 30 employees listed therein.

34. Further to the foregoing, the Claimant exhibited a check off form bearing 9 names who it avers were employees it recruited from the Respondent's workforce. It is apparent that the employees signed the check-off forms on 7th July 20204 before the Claimant sought recognition from the Respondent. Therefore, this brings the total number of unionisable employees recruited by the Claimant from the Respondent's unionisable workforce to 39.

35. According to the Respondent, the employees recruited by the Claimant Union are way below the legal threshold. In support of this position, the Respondent exhibited a list bearing 68 names, who it avers are the employees in its workforce. It is worth noting that in his testimony before Court, RW1 indicated that he has 69 employees in his workforce. He pleaded as much in the Reply to Claim.

36. Re-examined, CW1 testified that the employees of the Respondent are 68.

37. From the record, the Claimant forwarded a copy of a recognition agreement for the Respondent's signature through a letter dated 18th October 2024, addressed to the Respondent's advocates on record.

38. Applying the provisions of Section 54(1) of the *Labour Relations Act* to the case herein, it becomes evident that at the time of requesting the Respondent for recognition, the percentage of the recruited employees against the Respondent's unionisable workforce stood at 56%.

39. Therefore, it follows that at the material time, the Claimant had attained the legal threshold of a simple majority to warrant recognition by the Respondent.

40. Another issue raised by the Respondent in its defence is that its cleaning contract with Oshwal Education and Relief Board had expired on 1st January 2025 and was yet to be renewed. That as it stands, the Respondent does not have a contract with the workers.

41. In support of this position, the Respondent exhibited a copy of the cleaning contract, which indicates at clause 7 that the contract was to commence on 1st January 2022 up to 1st January 2025.

42. The Respondent further exhibited a copy of a letter dated 22nd January 2025 addressed to the Oshwal Education and Relief Board in which it had requested for renewal of the cleaning contract.

43. During cross-examination, CW1 stated that the Respondent's employees whom he recruited to the Claimant Union were at the time working at Visa Oshwal School.

44. In light of the foregoing, the Court has no reason to doubt the Respondent's assertion that its cleaning contract with Oshwal Education and Relief Board expired and that this had a ripple effect on the employment contracts with the employees recruited by the Claimant and who were at the time, stationed at Visa Oshwal School. As a matter of fact, the Claimant did not discount the Respondent's position by proving that the employees were still working at Visa Oshwal School.

45. To this end, it cannot be confirmed for a fact that the employees recruited by the Claimant from Visa Oshwal School have valid employment contracts with the Respondent to support a case for recognition by the Respondent. I say so, bearing in mind that there can be no recognition of a trade union without a valid contract of employment.

46. All in all, the Court finds that whereas the Claimant Union had attained a simple majority in terms of Section 54 (1) of the *Labour Relations Act* to warrant recognition by the Respondent at the material time, it will not be logical to direct the Respondent to sign a recognition agreement with the Claimant Union at this point in time, seeing that there is uncertainty as to whether the Respondent's employees have valid contracts of employment.

47. As I conclude, I find it worth pointing out that despite receiving the check-off forms from the Claimant union, sometime in June 2024, the Respondent has not given a reasonable justification why it failed to deduct trade union dues from its employees and remit the same to the Claimant Union. Indeed, the Respondent's action was in sharp contrast with RW1's assertion that he does not have a problem with any of his staff joining a trade union and taking any portion of their salary to the trade union.

48. Further, RW1's assertion that he is not obliged to effect trade union dues as the employees recruited by the Claimant were below the minimum legal threshold was way off the mark.

49. It should be appreciated that the deduction and remittance of trade union dues is not synonymous with the requirement for recognition of a trade union.

50. On this issue, it is worth pointing out that *the Constitution* of Kenya, 2010 and the *Labour Relations Act* acknowledge and guarantee freedom of association, which includes the right of an employee to belong, or not belong to a trade union. Consequently, by executing the check-off forms, the Respondent's employees had expressed their desire to join the Claimant Union.

51. In the same breath, it should be noted that payment of trade union dues is an obligation that goes hand in hand with an employee's right to join a trade union.

52. In terms of Section 48(2) and (3) of the *Labour Relations Act*, once an employee is recruited to join a trade union and signs a check-off form to that effect, an employer is required to commence deduction and remittance of union dues for the recruited employee within 30 days of being served with the said check-off forms.

53. In the present case, the Respondent has not denied receiving the check-off forms from the Claimant Union. Its only contention is that the employees recruited are below the legal threshold for purposes of recognition of the Claimant Union.

54. It is worth noting that Section 48(3) aforementioned is couched in mandatory terms, hence it is not up to the employer to elect whether to comply.

55. In the circumstances, the Respondent herein was mandated to effect deductions of trade union dues from the Claimant's members who are its employees and to remit the same to the Claimant's gazetted bank account. In this case, the Respondent was not justified in refusing to effect the trade union dues and remit the same to the Claimant's gazetted bank account.

56. With that being said, since there was no prayer with respect to deduction and remittance of trade union dues, the Court will not make any award to that effect.

Orders

57. The total sum of my consideration is that in as much as the Claimant Union has proved that at the time of seeking recognition, it had attained the minimum legal threshold stipulated under Section 54(1) of the *Labour Relations Act*, the Court will not be inclined to grant any order to this effect for the reason that it is doubtful whether presently, there are valid contracts of employment between the Respondent and the employees who had signed up for membership with the Claimant Union.

58. To this end, the Claim is disallowed. As it is the Respondent's actions and omissions which have triggered the instant Claim, it will bear the costs of the suit, which are assessed at Kshs 50,000/= to cover reasonable expenses and disbursements.

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 Ms. Mwendwa instructed by Mr. Otieno

For the Respondent Mr. Omari

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