



Kudheiha Workers Union v Board of Governor Mukurweini Technical Training Institute & another (Employment and Labour Relations Cause E052 of 2024) [2025] KEELRC 2208 (KLR) (24 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2208 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E052 OF 2024
ON MAKAU, J
JULY 24, 2025

BETWEEN

KUDHEIHA WORKERS UNION CLAIMANT

AND

THE BOARD OF GOVERNORS MUKURWEINI TECHNICAL TRAINING INSTITUTE 1ST RESPONDENT

THE SECRETARY TO THE BOARD OF GOVERNORS MUKURWE-INI TECHNICAL TRAINING INSTITUTE 2ND RESPONDENT

JUDGMENT

Introduction

1. The dispute herein is about the refusal by the Respondents to enter into a recognition agreement with the union contrary to section 54(1) of the *Labour Relations Act*. The suit is brought by the claimant, a registered trade union vide the Memorandum of Claim dated 4th December 2024. The reliefs sought are:
 - a. The respondent be restrained from intimidating, coercing, victimizing and harassing union members.
 - b. The respondent to sign the recognition agreement.
 - c. Costs of the suit plus interest.
 - d. Any other relief that the court may deem fit.
2. The respondents filed a joint defence denying all the averments made by the claimant and prayed for the suit to be dismissed with costs.



Factual Background

3. It was averred that the Respondents' employees voluntarily and without coercion exercised their right of association by joining the Claimant; that out of the Respondents' 22 employees, the union recruited 18 members, exceeding simple majority of the unionisable employees within the Respondent; and that as per the procedure, it served the Respondent with the check off forms signed by the members together with a standard recognition agreement and letter proposing a date of signing as 14/11/2023. However, the respondents failed to sign and ignored several reminders.
4. As a result of the Respondents refusal to sign the recognition agreement the Claimant reported a trade dispute to the Cabinet Secretary for Labour who appointed Ms. Joan Mungai of Nyeri Labour Office as Conciliator. However, the matter was not resolved and the Conciliator issued a Certificate of Unresolved Dispute dated 28th October 2024. In the meantime, the respondents allegedly proceeded to intimidate, harass and coerce its employees to withdraw from the Claimant.
5. The Claimant prayed that the Respondent be restrained from intimidating, coercing, victimizing and harassing union members, and be compelled to sign the recognition agreement.
6. The Respondents denied the Claim and averred that contrary to the Claimant's allegation, the simple majority threshold was not attained as provided by law. They denied intimidating the Claimant's members in any way. They therefore averred that the Claimant is not entitled to the reliefs sought in the claim and prayed that it be dismissed with costs for being frivolous, vexatious, and an abuse of court process.
7. During the hearing, Ms Adelene Wakuthii Murage, the branch secretary, testified as CW1 she adopted her written statement dated 12/2/2025 as her evidence in chief and also produced the bundle of documents as exhibits. He told the Court that they took the forms signed by the new members to the Respondents for deduction of union dues. She stated that the recruited members met the legal threshold for recognition being 18 out of 22 employees. She added that she gave the model copy of the recognition to the managers but they failed to sign.
8. On cross examination, she reiterated that they recruited a simple majority and stated that she had not seen the list of employees filed on 23/1/2025. She confirmed having seen the letters of withdrawal filed by the Respondents and maintained that the members were coerced to sign the same or else their contracts would not be renewed. She stated that the letters were written for them to sign. She contended that they had a simple majority as at the time of filing of the suit. She confirmed that two employees, Purity and Kiguta were dismissed.
9. In re-exam, she stated that when they sought recognition, they had 18 members recruited but the employees were coerced to withdraw as evidenced by the letter dated 23/7/2024. She stated that they still have the threshold for recognition as the 2 employees were terminated after the court had issued orders under certificate of urgency.
10. Mr. Simon Kimotho Mwangi, the Respondents' Principal and Board Secretary testified as RW1. He also adopted his written statement dated 23/1/2025 as his evidence and also produced the bundle of documents as exhibits. He stated that the Claimant does not have a simple majority as only 8 employees are members of the union. He added that the withdrawal was voluntary and that he never victimized any employee and none were laid off. He clarified that Kiguta's contract expired and prayed that the suit be dismissed.
11. On cross examination he stated that he has been in the institution for two and a half years and that he was aware that before joining the institution, there was a process of recognition of the union. He



confirmed that the threshold for recognition is simple majority and that during the conciliation they were asked to confirm the number. He further stated that the withdrawal letters were written before the conciliation and denied coercing any member to withdraw membership. He clarified that the letter dated 23rd July 2024, was responding to the claimant's letter dated 4th July 2024. However, he admitted that he did not comply with the conciliator's recommendations for recognition because the numbers were still in contention.

12. After the hearing both sides filed written submissions which I have considered alongside the evidence and the pleadings. the issues for determination are:
- a. Whether as at the time of filing this suit, the claimant had recruited into membership a simple majority of the respondent's unionisable staff.
 - b. Whether the claimant is entitled to the reliefs sought.

Analysis

A simple majority as at the time of filing of the suit

13. Section 4 (1) of the *Labour Relations Act* provides for an employee's right to enter or withdraw membership with a trade union as follows:

- " 4. Every employee has the right to –
- (1) (a) participate in forming a trade union or federation of trade unions;
 - (b) join a trade union; or
 - (c) leave a trade union."

14. The Claimant's contention is that it recruited 18 out of 22 unionisable staff of the respondent as members but after filing this suit, the employer coerced them to withdraw their membership or else their contracts would not be renewed. Coercion is defined in the *Black's Law Dictionary* 11th Edition to mean:

- " 1. compulsion of a free agent by physical, moral or economic force or threat of physical force.
2. conduct that constitutes the improper use of economic power to compel another to submit to the wishes of one who wields it."

15. Implied coercion is also defined to be synonymous to undue influence and its means:

"The improper use of power or trust in a way that deprives a person of free will and substitutes another's objective; the exercise of enough control over another person that a questioned act by this person would not have otherwise been performed, the person's free agency having been overmastered..."

Undue influence is unfair persuasion of a party who is under the domination of the person exercising the persuasion or who by virtue of the relation between them is justified in assuming that the person will not act in a manner inconsistent with his welfare "(Restatement (second) of contracts §177 (1) (1979)"



16. Having considered the material presented, I find that the Claimant has not produced any direct evidence of the alleged coercion. None of its members testified herein that he/she was coerced to withdraw from union membership. The claimant presumed there was coercion to withdraw membership, since the number of the recruited members dropped drastically after it reported a trade dispute to the Cabinet Secretary.
17. When it comes to withdrawal from union membership section 48 of the LRA provides as follows regarding:
- “(6) an employer may not make any deductions from an employee who has notified the employer in writing that the employee has resigned from the union.
 - (7) a notice of resignation referred to in subsection (6) takes effect from the month following the month in which it is given.
 - (8) an employer shall forward a copy of any notice of resignation he receives to the trade union.”
18. The respondent filed seven notices of withdrawal by Anne W. Maina, Joanary Wachira, Joyce W Warindi, William Muchoki Kanyua, Wanjau L Kariuki, Kabita Godfrey Muriu and Leah Wairimu Kihara served between February and August 2024. The seven were among the 18 members recruited by the claimant and the withdrawal reduced the membership to 11 out of 22 unionisable staff of the respondent, meaning that as at 9th December 2024 when the suit was filed, the claimant’s recruited membership had plummeted to 50 percent of the unionisable staff.
19. Section 54 of the LRA sets out the legal threshold for recognition of a trade union as follows:
- “(1) An employer, including an employer in the public sector, shall recognize a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees”.
20. In Aviation & Allied Workers Union v Air Kenya Express Limited & another [2013] eKLR the Court held that:
- “... The main requirement for grant of recognition by employers to trade unions, is that the trade unions must have recruited a simple majority of the employer’s unionisable employees. The objective in granting recognition is to enable the employer and the trade union, negotiate and conclude a Collective Bargaining Agreement.
- ...
23. The law acknowledges that freedom of association includes the right of an employee to belong, or not belong to a trade union. An employee can associate and dissociate. It is stated that the right to belong to the union must be accompanied by the right not to belong, just as much as freedom of expression must include the right to silence. Freedom of Association within the trade union is regulated under Section 4 of the Labour Relations Act. It is enshrined in the Constitution of Kenya.”
21. In this case, the said seven employees exercised their constitutional rights to join and also to withdraw from membership to the union. They have not shown this court that they were coerced to withdraw their membership and, in the circumstances, I assume that they acted voluntarily. Since the recruited



membership in the respondent's workforce had fallen to 50 percent as at the time of filing this suit, I find that the claimant did not meet the legal threshold of a simple majority for the employer to grant recognition to it. Consequently, it is free to make further recruitment and seek recognition afresh under section 54 of the *Act*.

Reliefs sought

22. The prayer to compel the respondent to sign a recognition agreement is declined because as at the time of filing the suit, the recruited number of the target staff did not amount to a simple majority.
23. However, I find that the claimant is entitled to an order of injunction to restrain the respondent from intimidating, coercing, victimizing and harassing union members because the right to join a trade union is granted by *the Constitution*.

Disposition

24. In view of the foregoing conclusion, I enter judgment for the claimant as follows:
 - a. An order of injunction to restrain the respondent from intimidating, coercing, victimizing and harassing union members.
 - b. An order that the claimant is at liberty to continue recruiting more members from the respondents unionisable staff.
 - c. The claimant is awarded costs of the suit plus interest.

DATED, SIGNED AND DELIVERED AT NYERI THIS 24TH DAY OF JULY, 2025.

ONESMUS N MAKAU

JUDGE

Order

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

