



Kenya Engineering Workers Union v Empire Glass Industries Limited (Employment and Labour Relations Cause E029 of 2022) [2025] KEELRC 2095 (KLR) (17 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2095 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E029 OF 2022**

**B ONGAYA, J
JULY 17, 2025**

BETWEEN

KENYA ENGINEERING WORKERS UNION CLAIMANT

AND

EMPIRE GLASS INDUSTRIES LIMITED RESPONDENT

RULING

1. The Respondent (applicant) filed an application by the Notice of Motion dated 11.04.2025 through Onyango Ndolo & Co Advocates. It was under section 3 and 16 of the Employment and Labour Relation Court (ELRC) Act, rule 73(2) and 74(1) (a) and (b) of the ELRC (Procedure) Rules 2024, order 22 rule 25 of the Civil Procedure Rules and all enabling provisions of the law. The applicant prayed for the following orders:
 - a. That this application be certified urgent, service of the same be dispensed with and the motion be heard ex-parte in the first instance.
 - b. That ex parte the Honourable Court be pleased to stay the execution of the judgment of the Justice Maureen Onyango of 11.11.2024 and the decree thereof pending hearing and determination of this application.
 - c. That the Honourable Court be pleased to stay the execution of the judgment of the Justice Maureen Onyango of 11.11.2024 and the decree thereof pending hearing and determination of this application.
 - d. That the Honourable Court be pleased to set aside, review, vary and or vacate the judgement and/or decree of the Justice Maureen Onyango of 11.11.2024.
 - e. That the Honourable Court be pleased to issue any other orders it deems fit in the interest of justice.



- f. That cost of this application be provided for.
2. The application is supported by the affidavit of Kamal Asodia and made on the following grounds:
- a. That the claimant alleges to have recruited 37 employees while the tabulation of the numbers in their pleadings indicates 34 employees. With the numbers in mind, the claimant has not met the rule simple majority on unionisable employees contrary to section 54 of the [labour relations act](#). There is a clear error apparent on the record.
 - b. That it has come to the attention of the respondent that the claimant is coercing its employees to join the claimant union which entail discovery of new and important material not available before.
 - c. That the circumstances of this case are such that they fall within the provisions of sections 3 & 16 of the [Employment and Labour Relations Court Act](#), Rule 73(2) and 74(1)(a) and (b) of the Employment and Labour and Relations Court Rules 2024, Order 22 Rule 25 of the Civil Procedure Rules warranting stay of execution and review.
 - d. That the rule of law is substantive justice and the applicant implores this honourable court to review its ruling to reflect the same.
 - e. That it is in the interest of justice that this application is certified urgent.
 - f. That the respondents will not suffer any prejudice as this application has been brought timeously.
 - g. That the rule of law is substantive justice and the applicant implores this Honourable Court to review its ruling to reflect the same.
 - h. That it is in the interest of justice that this application is certified urgent.
 - i. That the claimant will not suffer any prejudice as this application has been brought timeously.
3. In turn the Claimant/respondent's filed the Replying affidavit of Wycliffee Amakombo Nyamwata sworn on 10.05.2025. It was stated and urged as follows:
- a. That the application violates Rule 49 of the Employment and Labour Relations Court (Procedure) Rules, 2024 on interlocutory application to be filed together with written submissions.
 - b. The application does not meet the threshold of section 16 of the [Employment and Labour Relations Court Act](#), 2016.
 - c. That there is no error on number of members as the Honourable Court based her issue of simple majority on her finding that the claimant has recruited 29 out of 49 employees into membership and not the alleged figures of 34 or 37.
 - d. That even if the numbers alleged are used, still the same shall translate to over 51% simple majority.
 - e. On the issue of withdrawal or resignation, the Honourable Court is clear in the judgment that the same was done long after the date when the claimant had sought the recognition hence would not affect the claimant right to be recognized.
 - f. The application is made 5 months after the judgment, hence not in reasonable time and no reason has been given for the delay.



- g. On the issue of the judgment not being in line with section 54 of the *Labour Relations Act*, 2007, the only avenue available to the respondent, is an appeal to the court of appeal.
 - h. The application violates rule 9 of the employment and *labour relations act*, 2007.
 - i. There is no fresh evidence that was not in the reach of the respondent herein nor an error on the face of the judgment.
4. The parties filed their respective submissions. The Court has considered parties' respective positions and returns that the application must fail because of the following findings and reasons:
- a. The applicant alleges that there is an error apparent on record because the claimant alleged to have recruited 37 employees while tabulation of the numbers in the pleadings for the claimant was 34 employees. Accordingly, with such numbers the claimant had not met the threshold of simple majority recruitment of unionisable employees. It is obvious that such ground as urged does not amount to an error apparent on the face of the judgment herein and in any event, per the claimant's submission, the judgment found thus, "43. Having found that the Claimant recruited 29 out of 49 employees of the Respondent, I find that it had a simple majority of employees of the Respondent at the time it sought recognition. It was therefore entitled to recognition under section 54 of the Act." The ground for review is found to have been misleading or misconceived.
 - b. The other ground for review is that the claimant is coercing employees to join the union which entails discovery of new evidence and important material not available before or at trial. The Court finds that ground for review strange because it suggests a new cause of action and which has no bearing to the findings in the judgment herein that the claimant was entitled to recognition by the respondent.
 - c. As urged for the claimant, the respondent has not explained the delay in filing the application dated 11.04.2025 whereas judgment was delivered on 07.11.2024, a delay of over 5 months. The delay operates as an impetus of declining to grant the application.
 - d. Parties are in continuing industrial relationship which per judgment requires conclusion of a recognition agreement and then a collective bargaining agreement. Thus, each party to bear own costs of the application.
5. In conclusion the application for review dated 11.04.2025 is hereby determined with orders:
- a. The application is dismissed.
 - b. Each party to bear own costs of the application.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 17TH JULY, 2025.

**BYRAM ONGAYA,
PRINCIPAL JUDGE**

