



Banking, Insurance and Finance Union (K) v Mwalimu National Sacco Society Ltd & another; Kenya Union of Commercial, Food and Allied Workers (Interested Party) (Cause E031 of 2025) [2025] KEELRC 2005 (KLR) (4 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2005 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E031 OF 2025**

**AK NZEI, J
JULY 4, 2025**

BETWEEN

BANKING, INSURANCE AND FINANCE UNION (K) CLAIMANT

AND

**MWALIMU NATIONAL SACCO SOCIETY LTD 1ST RESPONDENT
NATIONAL LABOUR BOARD, MINISTRY OF LABOUR & SOCIAL
PROTECTION 2ND RESPONDENT**

AND

**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED
WORKERS INTERESTED PARTY**

RULING

1. The Claimant herein, Banking Insurance and Finance Union (K), instituted the suit herein vide a statement of claim dated 20th January, 2025 seeking the following reliefs:-
 - a. That the National Labour Board do file in Court its findings and/or its determination and/or recommendations on the application for revocation/termination of the Recognition Agreement between the 1st Respondent and the Interested Party.
 - b. That the Recognition Agreement signed between Mwalimu National Sacco Society Limited and Kenya Union of Commercial Food and Allied Workers on 19th December, 2003 be revoked and/or terminated forthwith.
 - c. That Mwalimu National Sacco Society Limited do sign a Recognition Agreement with Banking Insurance and Finance Union forthwith so that parties may commence formal



engagement in accordance with Section 54 of the [Labour Relations Act](#), Cap. 233 Laws of Kenya.

- d. Costs of the claim to the Claimant.
 - e. Any other relief the Court deems fit to grant.
2. The suit was filed contemporaneously with an evenly dated urgent Notice of Motion seeking similar orders as sought in the main suit. This Court declined to certify the application as urgent, and instead directed that responses thereto be filed. The application was, however, withdrawn by the Claimant/Applicant on 11th March, 2025, with no order as to costs.
3. This Ruling determines the Interested Party's preliminary objection to the Claimant's suit. The preliminary objection is shown to be dated 6th January, 2025, a date that was on 18th February, 2025 amended by an order of this Court to read 6th February, 2025. The Interested Party objects to the Claimant's suit on the following grounds:-
- a. That the suit violates the provisions of Section 54(6) and (7) of the [Labour Relations Act](#), 2007 as the Claimant/Applicant has not referred their dispute to the Ministry of Labour for conciliation on why the existing Recognition Agreement between the 1st Respondent and the Interested Party should not be cancelled.
 - b. That the Claimant has approached the Court in violation of Section 69(a) of the [Labour Relations Act](#) 2007 and in disregard of Rule 8(1)(b)(ii) of the Employment and Labour Relations Court (Procedure) Rules 2024.
 - c. That the Claimant cannot purport to take over a matter referred to the National Labour Board under Section 54(5) of the [Labour Relations Act](#), 2007 by the 1st Respondent as it is not the employer in question; being merely an interested party/a bystander and not a Principal Party.
 - d. That the suit is lodged in complete violation of Section 2(a) & (e) and 73(3) of the [Labour Relations Act](#) 2007 and in violation of Rule 8(1)(a) of the ELRC (Procedure) Rules 2024.
 - e. That the upshot of the violations and failure to adhere to lawful provisions is that the suit is pre-mature, frivolous, vexatious and devoid of merit, and ought to be dismissed with costs to the Interested Party.
4. The Claimant filed an affidavit, sworn by Isaiah Munoru Mucheke (the Claimant's National Organizing Secretary) on 26th March, 2025, in opposition of the Interested Party's preliminary objection. It is deponed in the said affidavit:-
- a. that the Claimant has complied with Section 54 (6) and (7) of the [Labour Relations Act](#), as read with Section 62(1) of the Act, by going through conciliation process and by subsequently approaching the Court under a certificate of urgency as demonstrated in the Claimant's list (bundle) of exhibits filed herein.
 - b. that the Claimant complied with Section 54(6) of the [Labour Relations Act](#) by referring the issue of revocation/termination of the Recognition Agreement [in issue] to the 2nd Respondent (National Labour Board) as demonstrated in the Claimant's list [bundle] of exhibits. That the National Labour Board (the 2nd Respondent) has filed its recommendations to the Court [dated 19th February, 2025].



- c. that under Section 15(4) of the *Labour Relations Act*, the Court cannot dismiss a claim for failure by parties to refer the matter for conciliation, but may stay proceedings and refer the matter for conciliation.
 - d. that the Claimant has complied with Section 69(a) of the *Labour Relations Act* and Rule 8(1)(b)(ii) of the ELRC (Procedure) Rules 2024 as there is evidence of a certificate of unresolved dispute as demonstrated in the Claimant’s bundle of exhibits filed herein.
 - e. that an application [that] had been filed before the 2nd Respondent under Section 54(5) of the *Labour Relations Act* has now been concluded and a report filed in Court on 19th February, 2025.
 - f. that the Claimant complied with Section 2(a) and (e) and Section 62(1)(b) of the *Labour Relations Act* as a Labour Dispute was reported to the Cabinet Secretary for Labour and Social Protection by the Claimant’s General Secretary as demonstrated in the Claimant’s list of exhibits filed herein.
 - g. that the Claimant’s General Secretary complied with the provisions of Section 73 of the *Labour Relations Act* and Rule 8(1)(a) of the ELRC (Procedure) Rules 2024 by appointing Tom Odero (Deputy General Secretary), Isaiah Munoru Mucheke (National Organizing Secretary) and Judith Kubai (Legal Officer) to perform all functions, to execute/sign documents and to act on behalf of the Claimant Union in all matters before this Court as demonstrated by a letter of authority dated 20th January, 2025 and included in the Claimant’s list of exhibits filed herein.
 - h. that the preliminary objection is baseless and an abuse of the Court’s process, and should be dismissed.
5. On 24th April, 2025, Miss Obiayo, learned Counsel for the 1st Respondent, informed the Court that the 1st Respondent did not intend to participate in the hearing of the preliminary objection, but had filed response to the main claim/suit pursuant to the Court’s directions given on 11th March, 2025. On the same date (24th April, 2025), Counsel for the 2nd Respondent informed the Court that the 2nd Respondent, likewise, did not intend to participate in the hearing of the Interested Party’s aforesaid preliminary objection. That the 2nd Respondent had defended/responded to the main suit vide its grounds of opposition dated 27th March, 2025. On its part, the Interested Party informed the Court that apart from the preliminary objection, it had filed a Memorandum of Interest, dated 19th March, 2025, in response to the Claimant’s suit. The Claimant’s suit herein can rightly be categorised as a defended suit.
6. Though stating particular provisions of the *Labour Relations Act* and this Court’s Rules of Procedure as the basis of the preliminary objection, the Interested Party’s preliminary objection dated 6th February, 2025 raises issues that can only be verified by matters of fact. The Claimant’s affidavit in response to the preliminary objection, which I have deliberately set out at paragraph 4 of this Ruling, attests to this fact. The deponent of the said affidavit refers to the Claimant’s list/bundle of exhibits in response to each point raised in the preliminary objection; hence inviting the Court to review evidence filed in support of the suit, and to do so before trial. This, in my view, the Court cannot do. Once an otherwise simple point of law is contested, the objection ceases to be “a pure point of law”, as matters of evidence/fact ought to be considered. Once facts bring “an impurity” to law, a preliminary objection cannot stand because the Court will have to investigate the veracity of contested facts to determine an issue otherwise of law.



7. It was held as follows in the case of Mukisa Biscuits Manufacturing Co. Ltd – vs – West End Distributors Limited [1969] E.A. 696:-

“ . . . A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

8. The Court further stated as follows in the Mukisa Biscuits Case (Supra):-

“ . . . A preliminary objection is in the nature of what used to be called a demurrer. It raised a pure point of law, which was argued on assumption that all the other facts pleaded by the other party were correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessary increase of costs and, on occasion confuse issues. The improper practice should stop.”

9. That said, the Interested Party’s preliminary objection dated 6th February, 2025 is hereby overruled, and is dismissed with no order as to costs.

10. The suit herein shall be fast-tracked, and shall be set down for hearing.

11. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 4TH DAY OF JULY 2025

AGNES KITIKU NZEI

JUDGE

Order

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

Appearance:

Mr. Munoru for the Claimant

Miss Obiayo for the 1st Respondent

Miss Jepkemei for the 2nd Respondent

Mr. Nyumba Interested Party

