



**Kenya Union of Commercial, Food and Allied Workers v Woolmatt Limited  
(Cause E008 of 2020) [2024] KEELRC 1628 (KLR) (27 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1628 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE E008 OF 2020  
HS WASILWA, J  
JUNE 27, 2024**

**BETWEEN**  
**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED  
WORKERS ..... CLAIMANT**  
**AND**  
**WOOLMATT LIMITED ..... RESPONDENT**

**RULING**

1. This ruling is in respect of the Respondent/ Applicant’s notice of motion dated 3<sup>rd</sup> July, 2023, filed pursuant to Sections 7, 54(1) and 54(5) of the Labour Relations Act, Sections 3,12,13,20 and 29(i) of the Employment and Labour Relations Act, Rules 17 and 38 of the Employment and Labour Relations Court (Procedure) Rules, 2016, and all other enabling provisions of the law, seeking for the following Orders; -:
  1. Spent.
  2. Spent.
  3. That this Honourable court be pleased to order stay of proceedings pending the hearing and determination of the Application lodged by the Respondent/Applicant with the National Labour Board on 27<sup>th</sup> June, 2023.
  4. That the costs of this Application be provided for.
2. The Application is based on the grounds on the face of the Application and the supporting affidavit of Mineshkumar Goshrani, the Director of the Respondent sworn on 3<sup>rd</sup> July, 2023 and based on the following grounds: -



- a. That the parties herein have been engaged in negotiations of the Collective Bargaining Agreement (CBA) and that the Applicant has been cooperative throughout the process and even forwarded a proposal as directed by the conciliator.
  - b. That after the negotiations, the conciliator recommended that the claimant recruits a simple majority of unionisable employees to enhance them to engage in the Collective Bargaining Agreement. He added that as it stands now, only a single employee out of 122 does not give the claimant the strength to vividly bargain in the CBA.
  - c. It is averred that after evaluating the recommendation by the conciliator, the Respondent/Applicant resolved to lodge an application dated 27<sup>th</sup> June, 2023, before the National Labour Board, seeking for revocation/termination of the Recognition Agreement dated 3<sup>rd</sup> November, 2016 between it and the claimant/Respondent.
  - d. That the said application is pending before the National Labour Board and it's only fair if these proceedings are stayed awaiting the outcome of the said Board to avert miscarriage of justice.
  - e. He maintained that the claimant has lost the simple majority as it currently represents only one employee out of a work force of One Hundred and Twenty-Two (122).
3. In a supplementary affidavit sworn on 29<sup>th</sup> January, 2024, Mineshkumar Goshrani, stated that the only member, one Mathew Mwanja Mutuse, parted ways with the claimant on 21<sup>st</sup> October, 2023 as such the claimant does not have any members in its employ.
  4. That this new information, has been brought to the attention of the National Labour Board, as such their application is formidable with higher chances of success.
  5. The Application is opposed by the Claimant/Respondent who filed a Replying Affidavit sworn on 29<sup>th</sup> February, 2024, by Mike O Oranga, the Claimant's National organizing secretary, who states as follows:
    - a. That the parties herein have a valid recognition Agreement entered into under section 54 of the Labour Relations Act, that paved way for negotiations of the Collective Bargaining Agreement.
    - b. He stated that the recognition Agreement will only be terminated after the parties have been heard by the National Labour Board in line with section 54(8) of the [Labour Relations Act, 2007](#).
    - c. He stated that the lodging of a dispute at the National Labour Board, by itself, does not invalidate or revoke the Recognition Agreement.
    - d. That while the matter is before National Labour Board, the Applicant's Managing Director and Human Resource Officer, Ms. Lucy Wacuka, have intimidated, coerced and threatened Union members to pull out of the trade Union as condition to retain their employment.
    - e. It is averred that the Respondent to actualized their threats have terminated the services of David Muoti Nyamwembe and Matthew Mwanja Mutuse the last remaining union members.
    - f. That the Respondent has for a while now victimized its members, causing the employees to protest on several occasion against the employers' anti-union activities.



- g. He maintained that the withdrawal from the Union was not done voluntary but by coercion by the Respondent to do away with Union representations and in the process infringe on its employee right to join and participate in Union activities.
  - h. The affiant stated that until the Recognition Agreement is revoked, parties are bound to enter into a collective Bargaining Agreement and an employee who is not a subscribing member shall pay Agency fee under section 49 of the [Labour Relations Act](#).
6. The application herein was canvassed by written submissions.

### **Applicant's Submissions.**

- 7. The Applicant submitted on two issues; whether the Applicant/ Respondent is entitled to the reliefs sought and who bears the costs of the instant Application.
- 8. On the first issue, it was submitted that the orders sought by the Applicant are discretionary in nature and ought to be exercised sparingly in the interest of justice. On that basis, it was argued that indeed the claimant has a recognition Agreement dated 3<sup>rd</sup> November, 2016, but that the Applicant has sought to revoke that Agreement by its Application dated 27<sup>th</sup> June, 2023 filed with the National Labour Board, which is pending determination.
- 9. It was submitted that its decision to revoke the Recognition Agreement was informed by the recommendation by the Labour officer, who stated that the claimant has only one employee out of 122 members of staff, as such, that the claimant had lost the simple majority and thus, there was need to revoke the recognition Agreement in line with section 54(5) of the [Labour Relations Act](#).
- 10. It was further submitted that the claimant parted ways with its only members, therefore that it does not have any membership with the Applicant, therefore negotiation of the Collective Bargaining Agreement is no longer tenable.
- 11. It is on that basis, that the Applicant submitted that their application before the National Labour Board is legally sound and well merited, with high chances of success since the Claimant does not have a simple majority of its members as required under sections 54(1) of the [Labour Relations Act](#).
- 12. Based on the foregoing, the Application submitted that it is in the interest of justice that these proceedings are stayed to allow the National Labour Board make its decision on the Application for revocation. In support of this, the Applicant relied on the case of [Eliud Wanjohi Gwandaru V Samuel Waita & 11 Others](#) [2021] eKLR where the Court expounded on the guiding principles in an application for grant of stay of proceedings.
- 13. On costs, the Applicant submitted that, they are entitled to costs as their Application is merited and has been brought in good faith.

### **Respondent's Submissions**

- 14. The Respondent submitted that even though there is an application filed before the National Labour Board, the parties herein still have a valid Recognition Agreement, which is yet to be revoked as such, the parties should be compelled to negotiate and conclude the Collective Bargaining Agreement.
- 15. It was submitted that while these proceedings are pending in this Court, the Respondent's managing director and Human Resource officer, have continued to intimidate and coerce its union members to pull out of the Union in order to retain their jobs, failure to which, their services would be terminated. In fact, that the Respondent has already terminated the services of union members that have defied



- their instructions to denounce the Union membership, to send a message to all other unionisable employees that it is unwelcoming to any Union.
16. It was submitted that the issue of victimization of union members lies in the ministry of labour and pending conclusion.
  17. It was argued that Union membership is a fundamental right guaranteed to all employees under Kenya statutes and the constitution and the Respondent is under an obligation to uphold such rights.
  18. The Respondent maintained that the Applicant should not be allowed to continue with its intimidation instead that it should be compelled to complete negotiations toward the Collective Bargaining Agreement for the good of the employees. Further that the Respondent is in violation of this Court Order issued on 5<sup>th</sup> October, 2020 and dated 15<sup>th</sup> October, 2020 in continuing with its victimization.
  19. The Respondent reiterated that there exist a valid Recognition Agreement which is the bedrock for Collective bargaining. Therefore, that the Application herein is incompetent, an abuse of Court process, lacks merit and should be dismissed with costs to the claimant/ Respondent.
  20. I have examined the averments and submissions of the parties herein. The applicants seek stay of these proceedings on account of the fact that they have filed an application before the NLB seeking revocation of the recognition agreement between them and the Respondents hence cannot enter negotiations leading to the signing of a Collective Bargaining Agreement.
  21. The Respondents on the other hand aver that the Applicants no longer have employees who are members of the Union.
  22. It is worth noting that this claim was filed in 2020 and since then many events may have unfolded.
  23. However, the fact of filing an application before the National Labour Board to revoke a recognition cannot be a bar to this court's proceedings with its processes. The delay in prosecuting this case has been inordinate given the nature of the case whereas the Claimant first approached court through a Certificate of Urgency.
  24. To stay the case's conclusion will delay this claim further and infringe the Claimant's right to fair hearing.
  25. I exercise my discretion in the circumstances and reject the application to stay the proceedings and direct the parties to proceed expeditiously and conclude this claim. Costs to the Respondents.

**RULING DELIVERED VIRTUALLY THIS 27<sup>TH</sup> DAY OF JUNE, 2024.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

In the presence of

Taiko for Claimant – Present

N/A for Respondent

Court Assistant - Fred

NAKURU ELRC CAUSE NO. E008 OF 2020 Page 3 of 3.

