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LEGAL ALERT



**Legal Analysis of Trade Union Recognition and
Collective Bargaining under the Labour Relations
Act**



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Introduction

The 2026 Labour Day celebrations in Kenya focused on the dignity of labour and the promotion of decent work for all workers, including the right to fair wages and safe working environments.

Therefore, the right to fair labour practices forms a foundational pillar for promoting fairness and harmony within the Kenyan workplace. Article 41 of the Constitution of Kenya guarantees every worker the right to fair labour practices, including the right to form, join and participate in the activities of a trade union. This constitutional right is operationalized through the provisions of the Labour Relations Act, Chapter 233 of the Laws of Kenya (“**the Act**”), which provides the legal framework governing trade unions, employers, collective bargaining, and dispute resolution mechanisms.

Part VII of the Act is particularly key in regulating the relationship between employers and trade unions. Sections 54 to 57 of the Act govern four (4) key aspects of labour relations: recognition of trade unions, election of union representatives, access to the employer’s premises, and collective bargaining agreements. Collectively, these provisions promote labour relations while balancing the rights and interests of both employers and employees.

Below, we highlight a few decisions by the Employment and Labour Relations Court (ELRC) that have brought into focus the application of the above-highlighted provisions of the Act.

1) Recognition of Trade Unions under Section 54 of the Act

Section 54 establishes the legal threshold for recogni-

-tion of a trade union by an employer for purposes of collective bargaining. An employer is obligated to recognize a trade union for the purposes of collective bargaining if that trade union represents the **simple majority** of unionisable employees.

In [Kenya Plantation and Agricultural Workers Union v Carnation Plants Limited \[2013\] KEELRC 534 \(KLR\)](#), the Court observed that recognition grants a trade union the authority to negotiate terms and conditions of employment on behalf of employees within the bargaining unit. The Court further emphasized that recognition without collective bargaining would render Section 54 meaningless.

In [Kenya Tertiary and Schools Workers Union \(KETASWU\) v Teachers Trainers College Councils, Kaimosi TTC \[2019\] KEELRC 2115 \(KLR\)](#), the Court reaffirmed that the statutory threshold under Section 54 is satisfied once a union demonstrates membership **exceeding 50 percent plus one**. The constitutionality of the recognition threshold itself was addressed in [Kenya Union of Commercial, Food and Allied Workers v Attorney General & another; Central Organization of Trade Unions \(Interested Party\) \[2021\] KEELRC 1902 \(KLR\)](#), where the ELRC upheld the requirement as reasonable and proportionate. According to the Court, the threshold promotes orderly bargaining and minimizes fragmentation of representation within the workplace.

2) Trade Union Representation and Workplace Democracy under Section 55 of the Act

Section 55 of the Act provides that recognition agreements ought to provide for the election of trade union representatives amongst the union members in in the workplace. These representatives, commonly



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referred to as shop stewards, play an important role in communication between employees, employers and the trade union.

The functions of the trade union representatives are limited in the Act to (a) represent members in grievance and disciplinary hearings at the workplace; and (b) perform any other functions specified in the recognition agreement or constitution of the trade union. This provision enhances employee participation and ensures that employees are not left vulnerable during disciplinary proceedings. Trade union representatives also facilitate the resolution of grievances at an early stage before they escalate into unrest.

The election of representatives by employees reinforces democratic participation within trade unions, such that employees are represented by individuals who understand their needs and grievances within the workplace.

3) Trade Union Access to Employer Premises under Section 56 of the Act

Effective union representation cannot occur in isolation from employees and therefore the Act requires that employers grant trade unions reasonable access to the employer's premises to pursue lawful activities of the trade union, including but not limited to: (a) recruiting members for the trade union; (b) holding meetings with members of the trade union and other employees outside working hours; (c) representing members of the trade union in dealings with the employer; and (d) conducting ballots in accordance with the Constitution of the trade union.

The Act strikes a balance between the employer's

rights and the operational efficiency of the trade union. While the trade unions ought to be granted access, the Act allows the employer the power to impose **reasonable conditions** as to the time and place of the rights granted to the trade union. This assists in avoiding disruption of operations in the employer's organization as well as acting in the interest of safety for all.

The ELRC has provided guidance on what constitutes "**reasonable access**" under Section 56 of the Act. In [Banking Insurance and Finance Union v APA Insurance Company Limited \[2025\] KEELRC 2714 \(KLR\)](#), the Court held that requiring a trade union to pay for the venue as a condition for accessing employees imposed an unreasonable burden on the trade union. The court emphasized that reasonable access must balance the trade unions' rights to organize with the employer's right to manage its operations without undue disruption.

Further, Courts have equally recognized that employer restrictions may be justified where they are reasonable and operationally necessary. In [Kenya Scientific Research International Technical and Institutions Workers Union v Thermopark Limited \[2023\] KEELRC 1780 \(KLR\)](#), the Court ordered that recruitment activities be conducted outside official working hours or in a manner that would not interfere with the employer's operations.

Similarly, in [Kenya Private Universities Workers Union v Islamic University of Kenya \[2025\] KEELRC 252 \(KLR\)](#), the Court upheld the employer's requirement that a trade union official should provide proof of identity and credentials before being granted access to the employer's premises.

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4) Collective Bargaining Agreements under Section 57 of the Act

Section 57 of the Act requires that employers who have recognized trade unions conclude Collective Bargaining Agreements (CBAs) with the recognized trade union, setting the terms and conditions of employment.

To facilitate meaningful negotiations, the Act requires employers to disclose relevant information necessary for collective bargaining. It follows that adequate disclosure of information ensures that trade unions negotiate from an informed position, hence promoting fairness in the bargaining process. The Act protects confidentiality at the time of disclosure of information by prohibiting the disclosure of privileged information.

The scope of disclosure obligations was considered in Kenya Engineering Workers Union v Bhachu Industries Limited [2023] KEELRC 1851 (KLR), where the Court held that an employer claiming confidentiality must specifically demonstrate why the information sought is privileged. The Court found that mere assertions of confidentiality without justification were insufficient.

Conclusion

The Act establishes a comprehensive framework governing collective labour relations in Kenya. The Courts have demonstrated that recognition and collective bargaining are not merely procedural requirements, but essential components of meaningful labour relations. As the country works towards building a better future for all workers, labour relations continue to evolve in the workplace, and as such, in order for employers to provide a

decent and dignified work environment for their employees, they must remain alive to their statutory obligations under the Act and the law in general.

DISCLAIMER

This alert is for informational purposes only and should not be considered or interpreted as legal advice. If you have any questions or require clarification, please feel free to contact the authors Sandra Kavagi, Partner (sandra@oraro.co.ke) and Anne Kadima, Partner (anne@oraro.co.ke) – or your usual contact at our firm for legal guidance.



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