



Transport Workers Union (K) v Kenya Civil Aviation Authority; Kenya Aviation Workers Union (Interested Party) (Cause E248 of 2022) [2024] KEELRC 1925 (KLR) (26 July 2024) (Judgment)

Neutral citation: [2024] KEELRC 1925 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E248 OF 2022**

**B ONGAYA, J
JULY 26, 2024**

BETWEEN

TRANSPORT WORKERS UNION (K) CLAIMANT

AND

KENYA CIVIL AVIATION AUTHORITY RESPONDENT

AND

KENYA AVIATION WORKERS UNION INTERESTED PARTY

JUDGMENT

1. The claimant filed the Memorandum of Claim dated 20.04.2022 as a union. The claimant made the following prayers;
 - a. That the Honourable Court issue an order directing the respondent to comply with the provisions of section 48 & 50 of the *Labour Relations Act*, 2007 by implementing deduction of trade union monthly dues from two hundred and seventy one (271) of its employees who are the claimant union members and any other member that may be recruited thereafter.
 - b. That in the event that the respondent does not comply to the deductions of monthly trade union dues, the Honourable Court issue an order for enforcement of section 19(6) of the *Employment Act*, 2007 directing the respondent to pay all un-remitted trade union monthly dues from its own funds from February, 2022 and all other subsequent months until full implementation of the check off forms.
 - c. That the respondent restrained from intimidating and/or harassing its employees on account of union membership.
 - d. That the Honourable Court do issue any other appropriate relief deemed fit to meet the end of justice.



2. The claimant alongside its claim filed the supporting affidavit of its General Secretary – David Mihadi. The claimant urged as follows:
 - a. That in January 2022 & March 2022 the claimant recruited a total of two hundred and seventy one (271) of the respondent employees as its union members and forwarded the signed check off to the respondent for deduction of monthly trade union dues.
 - b. That upon receipt of the check off forms, the respondent requested to be supplied with the claimant’s registration certificate and a copy of *the constitution*, which the claimant did, and since then, the respondent has never complied despite repeated reminders.
 - c. That the respondent is evading to deduct the union dues under the pretext that some of the recruited employees are managers without any proof of the claim.
3. The respondent filed its memorandum of response dated 10.05.2022 and its case was as follows;
 - a. That the claimant did not recruit the purported 271 employees of the respondent who are eligible of being recruited under the law.
 - b. That the claimant submitted names of 246 respondent’s staff supposedly recruited as per the claimant’s letter of 31st March 2022 out of which 151 staff members hold management grades on scales 6, 7 and 8. 74 staff members fall within the unionisable grade save that 7 of them comprise of staff whose nature of work do not allow them to join a union and out of the remaining 67 staff members, 58 are members of the Kenya Aviation Workers’ Union.
 - c. That there is no recognition agreement between the parties to this suit and that the claimant has not achieved the mandatory threshold to be recognised as a trade union in a case where another trade union namely the Kenya Aviation Workers’ Union preceded the claimant.
 - d. That whereas the law does not allow employees to be members of more than one trade union, the claimant is hell-bent on unlawfully recruiting members of the Kenya Aviation Workers’ Union.
 - e. That the respondent informed the claimant about the eligibility of the purported 246 members to join the claimant union.
 - f. That there are two trade unions being Aviation & Airport Services Workers’ Union and Kenya Aviation Workers Union who are entangled in a dispute in the Court of Appeal being Civil Appeal no. 23 of 2017.
 - g. That the respondent’s employee are still members of the Kenya Aviation Workers Union until the position of the said union is determined by the Court of Appeal or until its employees resign from being its members.
4. The claimant filed a reply statement dated 13.06.2022 in response to the respondent’s memorandum of response in which it stated;
 - a. That the respondent does not address itself to the issue in dispute, which is deduction of trade union monthly dues under section 48 & 50 of the *Labour Relations Act*.
 - b. That the claimant is not seeking for recognition agreement at this point in time and the same is not an issue before court and that same is not a prerequisite condition for deduction of trade union dues.



- c. That the Kenya Aviation Workers' Union has no membership in the respondent employment and is not subject herein.
5. The interested party filed their statement of response dated 24.07.2024 through Litoro & Omwebu Advocates and their case is as follows;
- a. That the interested party has a recognition agreement executed on 07.02.2015 with the respondent and a collective bargaining agreement (CBA) with the respondent duly registered in this court on 21.08.2015 for the period 2013-2015. Clause 42 of the CBA provides that the CBA is binding upon parties until both parties execute a new CBA.
 - b. That as such the CBA of the interested party with the respondent is still binding on the respondent until one is executed.
 - c. That on 17.06.2016 the interested party forwarded a CBA proposal covering 2015-2017 period to the respondent who failed to submit a counter proposal despite several reminders.
 - d. That the interested party lodged a complaint to the relevant cabinet secretary of labour as per the law.
 - e. That subsequently the respondent sought for a meeting for negotiation with the interested party in which the interested party was deregistered following an order of this court before negotiations were concluded.
 - f. That the said order was stayed by the Court of Appeal and Supreme Court but the respondent has failed to continue with the negotiations stating that the stay orders did not stop the deregistration.
 - g. That the interested party again lodged a claim with the cabinet secretary, Ministry of Labour and Social protection on 29.03.2022 in which the Cabinet secretary appointed a conciliator.
 - h. That the conciliator made two recommendations that the respondent should prepare and forward their counter proposal and that the respondent should deduct and remit union dues arrears to the interested party as there is in place a valid recognition agreement.
 - i. That the interested party denies the averments of the memorandum of claim seeking that the claimant be recognised as employees' union.
 - j. That the interested party is the duly recognised employee's union with the majority membership of all the unionisable employees in the respondent and that none of them have resigned from its membership.
 - k. They prayed that the claim herein be dismissed with costs.
6. The parties filed their respective submissions. The court has considered the parties' respective cases and makes finding as follows:
- a. In view of the dispute between the claimant and the respondent about the categorization of management employees to be excluded from union membership, it is difficult to find that the claimant has established the statutory simple majority to qualify the claimant for recognition by the respondent.
 - b. The evidence is that the interested party has been recognised by the respondent and a CBA concluded in circumstances that the interested party has a pending legal proceedings about the



deregistration. If the deregistration dispute is determined one way or the other, then the status of the claimant's relationship with the respondent will become clearer.

- c. In view of the dispute on the categories of the management and unionisable employees, the Court finds that until that dispute is resolved, the claimant appears not to have established a case for deduction of union dues. The parties may consider to be guided with the provisions of the Industrial Charter as may be appropriate.
- d. Parties are in continuing or anticipated industrial relationship and each will bear own costs.

In conclusion, the suit is hereby dismissed with orders each party to bear own costs of the proceedings.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 26TH JULY 2024.

BYRAM ONGAYA

PRINCIPAL JUDGE

