

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NUMBER E 011 OF 2025

KENYA LONG DISTANCE TRUCK DRIVERS

AND ALLIED WORKERS UNION.....CLAIMANT

VERSUS

TRANSWAY [K] LOGISTICS COMPANY.....RESPONDENT

AND

CENTRAL ORGANIZATION OF TRADE

UNIONS..... INTERESTED PARTY.

JUDGMENT

Background

1. Through a Memorandum of Claim dated 10th December 2024, the Claimant sued the Respondent seeking the following reliefs;

- a) That this Court does direct the Respondent to recognise the Claimant as the Union representing the rights of its members who are employees of the Respondent.
 - b) That this Court issues and order compelling the Respondent to remit all union dues owed on behalf of its members from the date of recognition.
 - c) General damages
 - d) Costs of the suit.
2. The Respondent did not enter an appearance or file a Statement of Response. The matter proceeded as an undefended cause.

The Claimant's Case.

3. The Claimant presented one witness, Nicholas Mbugua, its General Secretary, to testify on its behalf during the formal proof. The witness adopted his witness statement filed herein as his evidence in chief.
4. The witness stated that, on or about June 2024, the Claimant recruited a total of 26 unionisable drivers employed by the Respondent. Subsequently, on 24th July 2024, they forwarded the check-off forms, a draft recognition

agreement, and a request for deductions and remittance of trade union dues to the Respondent.

5. Without any justifiable cause, the Respondent refused to comply and began threatening the drivers who had been recruited with dismissal if they did not denounce the union.
6. He further stated that, aggrieved by the Respondent's actions, the Claimant sought conciliation through the office of the Chief Industrial Relations Officer in Mombasa. Despite several summonses from the Conciliator, the Respondent failed to give reasons for its reluctance to execute the recognition agreement. Consequently, the Conciliator issued a Certificate of Unresolved Dispute dated 3rd December 2024.
7. The Respondent is in blatant breach of the stipulations of the Constitution and the Labour Relations Act.

Analysis and Determination

8. I have carefully considered the pleadings and evidence by the Claimant, and the following issues emerge for determination;
 - a. Whether the Claimant has demonstrated that it made the legal threshold for recognition.

- b. Whether the reliefs sought can be availed to the Claimant.
9. Prior to addressing the issues identified, it is important to reiterate that the absence of defence following the Respondent's non-appearance does not in any way lessen the Claimant's obligation to substantiate their case to the required standards.
10. Part VII of the Labour Relations Act, 2007, provides for the recognition of Trade Unions and Collective Bargaining Agreements. Section 54 [1] provides;
- “An employer, including an employer in the public sector, shall recognise a trade union for purposes of collective bargaining if it represents the simple majority of unionisable employees.”*
11. Given the wording of this provision, it is clear that a trade union qualifies for recognition by the employer only when it has recruited a simple majority of the unionisable employees. In a dispute regarding recognition, determining whether the alleged recruited employees constitute a simple majority would require the Union to plead with clarity and proffer sufficient evidence demonstrating the total unionisable population within the employer

enterprise and what fraction of that population the recruited members constituted at the material time.

12. I have carefully considered the Statement of Claim filed herein by the Claimant and the witness statement [turned evidence in chief] by the Claimant's witness, and I hesitate not to conclude that the total number of the unionisable employees was neither pleaded nor stated in the Statement of Claim or the witness statement, respectively.

13. In the circumstances of the instant matter, the total number of unionisable employees was a material fact that needed to be pleaded and proved. It wasn't. Consequently, it is this Court's finding that the Claimant did not establish to the requisite standard that it had met the threshold for recognition, as contemplated under section 54[1] of the said Act.

14. I now turn to consider whether the Claimant is entitled to the reliefs sought. Having found, as I have hereinabove, that the Claimant failed to prove the threshold, there cannot be a basis for this Court to issue an order directing the Respondent to recognise the Claimant and conclude a written recognition agreement under Section 54[3].

15. Section 48[1] of the Labour Relations Act defines trade union dues as a regular subscription required by a member of a trade union as a condition of membership. The provision doesn't suggest that payment of trade union dues is tied to the conclusion of the written recognition agreement mentioned above. Therefore, trade union dues are payable whether or not a recognition agreement has been concluded.

16. Nonetheless, if the employer were to deduct dues from the salaries of recruited members and remit them to the Union, it is imperative that the Union formally request that the Minister issue an order instructing the employer to deduct trade union dues from employees' wages and remit the deducted amounts to the Union. The employer may commence deducting trade union dues from employees' wages only once the order is issued.

17. The Claimant did not tender before this Court any evidence that the order was ever issued by the Minister and served on the Respondent. In light of this, I am not convinced to issue an order directing the deduction of its employees' salaries and remittance to the Claimant as union dues.

18. However, the Claimant should take comfort that, under Section 52 of the Act, any recruited members are not prevented from paying any dues, levies, subscriptions or other payments authorised by its Constitution directly to it.

19. In the upshot, I find the Claimant's case unproven. It is hereby dismissed.

Read Signed and Delivered on the 29th of January 2026.

OCHARO KEBIRA

JUDGE