



Kenya Long Distance Truck Drivers & Allied Workers Union v Transway (K) Logistics Company; Central Organization of Trade Unions (Interested Party) (Employment and Labour Relations Cause E011 of 2025) [2025] KEELRC 1179 (KLR) (24 April 2025) (Ruling)

Neutral citation: [2025] KEELRC 1179 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

EMPLOYMENT AND LABOUR RELATIONS CAUSE E011 OF 2025

K OCHARO, J

APRIL 24, 2025

BETWEEN

KENYA LONG DISTANCE TRUCK DRIVERS & ALLIED WORKERS UNION CLAIMANT

AND

TRANSWAY (K) LOGISTICS COMPANY RESPONDENT

AND

CENTRAL ORGANIZATION OF TRADE UNIONS INTERESTED PARTY

RULING

1. By a notice of motion dated 10th of December 2024, expressed to be under Article 42 of *the Constitution* of Kenya, Sections 24 & 28 of the *Labour Relations Act*, Order 40 Rules 1 and 2, Order 51 Rule 1 of the Civil Procedure Rules, and Sections 1A, 1B, 3 and 3A of the *Civil Procedure Act*, the Claimant Applicant seeks;
 - I. That the application be certified urgent and the service be dispensed with in the first instance.
 - II. That, pending the hearing and determination of this application
 - III. That, pending the hearing and determination of this suit inter partes, a temporary order of injunction does issue restraining the Defendant by itself, its agents, employees, assigns, advocates, servants or any other person acting under the instructions of the Defendant from terminating the employment of employees recruited by the Claimant.
 - IV. Any other order/relief that the court may deem fit to grant in the interest of justice.



2. The application is premised on the grounds set out on the face of the application and on the supporting affidavit sworn by Nicholas Njuguna, the Claimant's General Secretary, sworn on 10th December 2024.
3. When this matter came up for directions on the hearing of the instant application on 25th February 2025, this Court was satisfied that service had been effected on the Respondent and the Interested Party. Noting that they had not filed a response to the application, this Court reserved the application for ruling.
4. The Application is premised on the following prime grounds;
 - I. That the Claimant has recruited 26 drivers working for the Respondent into its membership out of the 31 drivers in the employment of the latter.
 - II. Despite forwarding the check off forms and a draft recognition agreement to the Respondent, the Respondent has failed to recognise the Claimant.
 - III. Efforts to mediate through the Mombasa County Labour conciliation office have failed.
 - IV. The Respondent has threatened to terminate the employment of employees whom the Claimant has recruited if they do not denounce the union.
 - V. If the orders sought herein aren't granted, the Respondent will unfairly terminate their employment.

Determination.

5. The Right to Organise and Collective Bargaining Convention [ILO Convention No. 98] is a fundamental international labour convention that guarantees workers' right to form and join organisations of their choice and engage in collective bargaining with employers. It also addresses anti-union discrimination in the workplace. The convention's postulations are largely embodied under Article 41 of *the Constitution* of Kenya.
6. It will be a breach of the stipulations of the Convention, and an unfair labour practice under Article 41 of *the Constitution* of Kenya, 2010, for an employer to cause the dismissal of or otherwise prejudice their employee (s) by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.
7. Any termination of an employee's employment on account of their union membership or activities shall be automatically unfair termination, as it shall be on one of those prohibited grounds under Section 46 of the *Employment Act*, 2007.
8. As the Claimant's factual assertions, including that the Respondent is threatening to terminate its members' employment for the reason of their being its members, are not challenged in any manner, I find that the Claimant has established prima facie with a chance of success. The interlocutory injunction sought is deserved, therefore.
9. Consequently;
 - I. Pending the hearing and determination of this suit inter partes, a temporary injunction is hereby granted restraining the Respondent, its agents, employees, agents or servants or any person acting under its instructions, from terminating the employment of any of the employees recruited by the Claimant, influenced by the fact of their membership in union or participation in its activities.



II. The Costs of this application will be in the cause.

**READ, SIGNED AND DELIVERED VIRTUALLY IN MOMBASA THIS 24TH DAY
OF APRIL, 2025.**

OCHARO KEBIRA

JUDGE

