



Kenya National Union of Breakdown Recovery Commuters and Freight Agency Workers v Holiday Cars and Tours Limited; Transport and Allied Workers Union (Interested Party) (Cause E619 of 2022) [2025] KEELRC 2294 (KLR) (31 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2294 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E619 OF 2022**

**L NDOLO, J
JULY 31, 2025**

BETWEEN

**KENYA NATIONAL UNION OF BREAKDOWN RECOVERY COMMUTERS
AND FREIGHT AGENCY WORKERS CLAIMANT**

AND

HOLIDAY CARS AND TOURS LIMITED RESPONDENT

AND

TRANSPORT AND ALLIED WORKERS UNION INTERESTED PARTY

JUDGMENT

1. In its Memorandum of Claim dated 5th September 2022, the Claimant lists the following as issues in dispute:
 - a. Refusal by the Respondent to sign a recognition agreement with the Claimant Union;
 - b. Refusal by the Respondent to deduct and remit union dues on account of the Claimant’s members in the Respondent’s employment;
 - c. Refusal by the Respondent to comply with minimum general wage guidelines applicable to the Claimant’s members in the Respondent’s employment;
 - d. Victimization, coercion and/or intimidation of the Claimant’s members because of their affiliation to the Claimant Union.
2. The Respondent filed a Response dated 11th November 2022 and the Interested Party filed its Reply dated 6th February 2023. When the parties appeared before me on 1st October 2024, the Claimant stated



that it wished to prosecute its claim by way of pleadings and written submissions. The Respondent and Interested Party did not object to this proposal by the Claimant.

The Claimant's Case

3. The Claimant pleads that between March and April 2022 it recruited into its membership, a simple majority of the Respondent's unionisable employees.
4. The Claimant adds that on 27th April 2022, it served the Respondent with duly completed check-off forms, as evidence of enrolment and authority to deduct union dues.
5. The Claimant avers that the Respondent failed to deduct and remit union dues, prompting the Claimant to report a trade dispute to the Ministry of Labour.
6. Upon appointment of a Conciliator, parties were invited for a conciliation meeting on 26th July 2022. The Claimant complains that the Respondent declined to attend the meeting; instead, the General Secretary of Transport and Allied Workers Union (the Interested Party), Dan Mihadi showed up, purporting to represent the Respondent. The Claimant accuses the Respondent and the Interested Party of frustrating the conciliation exercise.
7. On 19th August 2022, the Claimant wrote to the Respondent, on behalf of its members, asking for compliance with minimum wage guidelines. The Claimant states that the Respondent did not accede to its request.
8. The Conciliator convened a second conciliation meeting on 31st August 2022 but the Respondent did not attend.
9. The Claimant claims that on 30th August 2022, the Respondent issued a circular to line managers, attaching a standard union membership withdrawal form to be given to the Claimant's members. According to the Claimant, the intention was to frustrate the signing of a recognition agreement between it and the Respondent.
10. The Claimant states that on 1st September 2022, the Respondent's line managers asked the Claimant's members to sign the standard union membership withdrawal form or face termination of their employment.
11. The Claimant claims to have recruited 73 out of 89 of the Respondent's unionisable employees and therefore asserts its right to recognition.
12. The Claimant accuses the Respondent of contravening Article 41 of *the Constitution*, Sections 4 & 48 of the *Labour Relations Act* and applicable minimum wage guidelines.
13. The Respondent asks the Court to compel the Respondent to comply with these provisions.

The Respondent's Case

14. In its Response dated 11th November 2022, the Respondent denies the issues in dispute as stated in the Memorandum of Claim.
15. The Respondent terms the Claimant Union as a stranger with no recognition agreement. The Respondent accuses the Claimant of attempting to poach its employees who have subscribed to the Interested Party.



16. The Respondent avers that its employees have signed check off forms with the Interested Party and that no resignation letters as required under Section 48(8) of the *Labour Relations Act* have been presented either to the Respondent or the Interested Party.
17. The Respondent further accuses the Claimant of orchestrating a scheme to mislead its employees into signing other check off forms, without regard to the fact that the employees could not belong to two unions contemporaneously.
18. The Respondent adjudges the signing up of its employees by the Claimant as clandestine as there was no disclosure by the Claimant of the statutory requirement for the employees to resign from the existing union before signing check off forms for a new union.
19. The Respondent asserts that it has a recognition agreement with the Interested Party, where its employees are represented by their chosen representatives. The Respondent adds that the said employees remit and/or have instructed the employer to remit their union dues to the Interested Party.
20. The Respondent avers that upon noticing the misstep in its recruitment efforts, the Claimant attempted to mislead the employees to resign and/or coerce the Respondent into constraining and compelling the employees to resign from the existing union membership, which efforts were unsuccessful. According to the Respondent, this is the reason why the Claimant has not produced any resignation notices issued to the Interested Party.
21. The Respondent further avers that its employees who had signed up to join the Claimant Union, withdrew their membership after it was explained to them that they could not belong to two unions at the same time. The Respondent therefore maintains that the Claimant does not have any members within its establishment.
22. The Respondent concludes that the Claimant has no locus standi to bring any claim on behalf of the Respondent's employees.

The Interested Party's Case

23. In its Reply dated 2nd June 2023, the Interested Party contends that the Respondent's unionisable employees are in fact its members and the Claimant could not therefore lawfully recruit them. Consequently, the Interested Party contends that the Claimant has no members within the Respondent's establishment.
24. The Interested Party maintains that the Respondent, which carries on business as a registered tour company, falls within the Interested Party's jurisdiction, as contemplated under Section 48(2) of the *Labour Relations Act*. The Interested Party confirms that it has a recognition agreement with the Respondent.
25. The Interested Party contends that during the period between March and April 2022, when the Claimant is said to have recruited members from the Respondent's establishment, the Claimant did not have the prerequisite instrument from the Ministry of Labour, authorising it to recruit members pursuant to Section 48(2) of the *Labour Relations Act*.



Findings and Determination

26. In my ruling dated 26th October 2023, by which I determined the Claimant's interlocutory application, I stated the following:

“Looking at the pleadings and submissions filed by the Claimant and the Interested Party, there are many contested issues of fact that can only be determined in a full trial. In addition, the issues raised are of a substantive nature touching on the rights of two trade unions, an employer and its employees.” [Emphasis added]

27. It would appear that the Claimant ignored these clear directions given by the Court as to how the claim lodged by it ought to be prosecuted. As the party that moved the Court at the first instance, the Claimant bore the primary duty to present evidence in support of its claim that it was the majority union within the Respondent's establishment, and that the Respondent and the Interested Party had frustrated its union activities.

28. In its decision in *Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & another* [2005] 1 EA 334 the Court of Appeal stated as follows:

“As a general proposition under Section 107(1) of the *Evidence Act*, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that casts upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act.”

29. The Claimant did not call any witnesses to testify on the many allegations of fact made in the Memorandum of Claim and written submissions. With specific focus on the submissions, the Claimant took the view that because the Respondent and the Interested Party did not adduce evidence to contradict the averments made by it, then the claim ought to be allowed.

30. With tremendous respect, this is a misapprehension of our adversarial system of litigation, where the party invoking the aid of the law must first present their case before the opposite party can respond. To say that because the opposite party did not present evidence in contradiction then the claim ought to be allowed would in effect be shifting the legal burden to the wrong party, much like holding that the Court will believe the party that moves it first. That procedure is unknown in law and flies right in the face of the honoured principles of fair trial.

31. Having failed to present evidence to support its claim, the Claimant has proved nothing before the Court. That being, the case, the only thing to do is to dismiss the entire claim, which I hereby do.

32. In the spirit of social justice and future industrial harmony, I direct that each party will bear their own costs.

33. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 31ST DAY OF JULY 2025

LINNET NDOLO

JUDGE

Appearance:

Mr. Khaemba (Union Representative) for the Claimant



Mr. Kagunyi for the Respondent

Mr. Ndege (Union Representative) for the Interested Party

