



**Kenya Aviation Workers' Union v Kenya Airports Authority (Petition E195 of 2023) [2024] KEELRC 583 (KLR) (15 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 583 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**PETITION E195 OF 2023**  
**B ONGAYA, J**  
**MARCH 15, 2024**  
**IN THE MATTER OF: ARTICLE 2, 22, 25, 41, 47 AND 50 OF THE CONSTITUTION**  
**AND**  
**IN THE MATTER OF: THE LABOUR RELATIONS ACT, 2007**  
**AND**  
**IN THE MATTER OF: INTERPRETATION OF SECTIONS 2, 4, 8, 48**  
**AND 54 OF THE LABOUR RELATIONS ACT, 2007 AS RELATES TO**  
**RECOGNITION AGREEMENT AND COLLECTIVE BARGAIN AGREEMENT**  
  
**BETWEEN**  
**KENYA AVIATION WORKERS' UNION ..... PETITIONER**  
**AND**  
**KENYA AIRPORTS AUTHORITY ..... RESPONDENT**

**JUDGMENT**

1. The petitioner filed the petition dated 13.10.2023 through Guserwa & Company Advocates seeking the following prayers:
  - a. A declaration that the notice issued by the respondents dated August 28, 2023 is null and void.
  - b. A declaration that the notice to revoke the recognition agreement signed on the 2<sup>nd</sup> of April, 2014 by parties is a contravention of the petitioner's constitutional rights and the the same is null and void.
  - c. A declaration that a recognition agreement is an instrument between the bargain units and cannot be revoked by the respondent unprocedurally and without basis.
  - d. An order directed to the respondent to withdraw the notice issued to the petitioner.



- e. General damages for constitutional breaches and violations.
  - f. Costs of, and incidentals to, these proceedings be borne by the respondent.
  - g. Any other relief that this Honourable Court may deem just to grant.
2. The petition was based upon the supporting affidavit of Moses Ndiema and annexures thereto filed together with the petition and sworn on 13.10.2023. The petitioner's case is as follows:
- a. That the said Moses Ndiema is the National Secretary General of the petitioner or applicant union.
  - b. That the petitioner has recruited a majority of the unionisable employees of the respondent since it signed the recognition agreement with the corporation on the April 22, 2014. The recognition agreement is exhibited.
  - c. That from the date of signing the agreement, the respondent has been uncooperative in negotiating the employees' terms of engagement, their Collective Bargaining Agreement, their grading and welfare matters resulting in filing of numerous cases and petitions.
  - d. That most of the disputes are still pending in court and the respondent has embarked on non-deduction of union dues to allege that the union membership has been dwindled in order to give way to issue notice to terminate the recognition agreement. That is the subject matter in ELRC No. 913 of 2022 still pending in Court and the pleadings are exhibited.
  - e. That on 28<sup>th</sup> of August 2023, the respondent issued the petitioner with a 3-month notice of its intention to terminate or revoke the recognition agreement without any basis and justification. The notice is exhibited.
  - f. That the respondent's allegation that the petitioner has dwindled to below 50% membership is unjustified and that the union has a strong membership of 1156 out of 1650 unionisable staff being over 90% of unionisable employees.
  - g. That the respondent has no legal power to terminate the recognition agreement and has not followed due process of the law.
  - h. Petitioner urged the Court to find merit in the petition and grant the prayers sought.
3. The respondent did not file any response or replying affidavit to the petition.
4. Final submissions were filed by the Petitioner. The Court has considered all the material on record. The Court finds as follows:
- a. The respondent appointed the Federation of Kenya Employers to act in the matter but no replying affidavit or grounds of opposition were filed to oppose the petition. The facts of the case as per the petition and the supporting affidavit are found correct as are not rebutted at all.
  - b. Section 54(5) of the *Labour Relations Act*, 2007 provides that an employer, a group of employers or employer's association may apply to the National Labour Board to terminate or revoke a recognition agreement. In the instant case, the respondent by a letter dated 28.08.2023 alleged that employees had resigned from the petitioner union and the membership threshold had dwindled to below simple majority of unionisable staff as envisaged in section 54(1) of the *Labour Relations Act*. The respondent was therefore giving the petitioner a 3-months' notice to terminate the recognition agreement. The notice was stated to be effective 28.08.2023 and per clause 14 of the recognition agreement dated 22.04.2014. Thus, the recognition agreement



would terminate effective 27.11.2023 per that impugned letter. Henry Ogoye, Ag, Managing Director signed the letter.

- c. Clause 14 of the recognition agreement provides for termination thus, “This agreement will be terminated by either party on giving (3) months written notice issued to either party.” The Court finds that the clause must be interpreted and applied in consistency with section 54(5) of the *Labour Relations Act*, 2007 so that the respondent must first apply to the Board to terminate or revoke the recognition agreement. It is only after the Board authorises the termination that the respondent can invoke clause 14 of the agreement. Thus while the Court considers that clause 14 of the agreement is capable of being invoked in line with the said section 54 (5), the clause as invoked in the impugned letter resulted into an *ultra vires* decision or impact for want of the Board’s decision in that regard as envisaged in section 54(5) of the *Act*. In any event, the petitioner’s case that it still holds simple majority of the respondent’s unionisable employees renders the alleged reason for revocation or termination of the recognition agreement mute. The Court observes that the Ag. Managing Director in the impugned letter does not state that he was communicating the decision of the respondent’s Board in that respect. Clause 13 of the recognition agreement states that the agreement does not derogate from the statutory or policy of the respondent’s Board of Directors and it appears that the Ag. Managing Director issued the letter in his own capacity without consulting and obtaining the Board’s policy direction yet, per section 54(5) of the *Act*, the employer being the respondent and the Board being the decision maker, the impugned letter had no Board’s will as expected. The impugned letter was *ultra vires* and unlawful.
- d. The petitioner has established violation of the right to fair administrative action per Article 47 of *the Constitution* as the impugned letter was based upon unreasonable ground of the petitioner not having sustained simple majority of unionisable members and the letter was *ultra vires* the statutory role of the National Labour Board in revocation or termination of recognition agreements.
- e. The applicant has established the remedies as prayed for the petitioner. However, the Court considers that no damages for violation or threatened violation of constitutional rights will not issue because the remedies rendering the impugned letter null and void should be sufficient relief in the circumstances. The submission for award of Kshs. 10 million has not been justified at all. The respondent will pay costs of the petition.

In conclusion, judgment is hereby entered for the petitioner against the respondent for:

1. The declaration that the notice issued by the respondent dated August 28, 2023 is null and void.
2. The declaration that the notice to revoke the recognition agreement signed on the 2<sup>nd</sup> of April 2014 by parties is a contravention of the petitioner’s constitutional rights and the same is null and void.
3. The declaration that a recognition agreement is an instrument between the bargain units and cannot be revoked by the respondent unprocedurally and without basis.
4. An order directed to the respondent to withdraw the notice issued to the petitioner.
5. The respondent to pay the petitioner’s costs of the petition.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 15<sup>TH</sup> MARCH 2024.**



**BYRAM ONGAYA**  
**PRINCIPAL JUDGE**

