



**Public Transport Operators Union v Dalai (Cause E361 of 2024)
[2024] KEELRC 13186 (KLR) (22 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13186 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E361 OF 2024
SC RUTTO, J
NOVEMBER 22, 2024**

**BETWEEN
PUBLIC TRANSPORT OPERATORS UNION CLAIMANT
AND
MR. MADHVI DALAI RESPONDENT**

RULING

1. The Claimant Union filed a Statement of Claim on behalf of Matilda Nganga, the grievant herein. According to the Claimant, the grievant was employed by the Respondent in March 2016 as a house help. That the grievant proceeded on maternity leave from 6th August 2022 and was expected to resume work on 5th November 2022. She was advised by the Respondent not to report to work until further advised to do so. The Respondent failed to communicate within the extended time prompting the grievance to visit her workplace where she was informed that her services were no longer required.
2. It is the Claimant's contention that the termination of the grievant was unfair in terms of Section 45(2) of the Employment Act. To this end, the Claimant has sought on behalf of the grievant, the sum of Kshs 653,000.00 being notice pay, severance pay, leave pay, overtime and compensation for unfair termination.
3. The Respondent entered appearance and filed a Notice of Preliminary Objection dated 15th June 2024, which is premised on the following ground:
 - 1 The suit is *per incuriam* Section 54(3) of the Labour Relations Act since there is no recognition agreement to enable the applicant have locus to represent the alleged employee. The suit has been filed without the requisite locus standi.
4. It is that preliminary objection that is the subject of this Ruling.



5. The Claimant responded to the preliminary objection by filing a Replying Affidavit sworn on 8th July 2014 by Festus Okonji. Mr. Okonji who describes himself as the Claimant's Secretary General, avers that Section 54 of the [Labour Relations Act](#) does not obviate, nor does it negate the employee's right to be represented in court with respect to industrial relations issues and the Respondent's excesses on its employees. That the alleged absence of a recognition agreement between the Claimant and the Respondent is therefore not a reason as would have the Court entertain the preliminary objection as filed.
6. Mr. Okonji further states that a worker can join a trade union as a private member so the fact that there may be no recognition agreement between the Respondent and the Claimant does not in any way negate the legitimacy of the issue before this court nor the Claimant's right to move this court.
7. That further, Articles 22 and 258 of the [Constitution](#) affirm the grievant's rights to be represented by an individual or person in any court of law in the event the grievant's right may be in danger of being violated or may have been violated as is the current scenario.
8. On 11th July 2024, the Court directed that the objection be canvassed by way of written submissions.

Submissions

9. The Respondent submitted that sufficient legal interest must be demonstrated so as to have standing to sue. It was the Respondent's further submission that only upon signing the recognition agreement can a trade union become a representative of unionized employees. In support of the Respondent's arguments, reference was made to the cases of *LSK v Commissioner of Lands & others*, HCCC 464 of 2000(Nakuru) and [CWU v Safaricom Ltd](#), Cause No. 31 of 2013.
10. The Respondent further posited that the Claimant should first have moved this Court seeking recognition before filing the suit.
11. It is worth mentioning that the Claimant did not file written submissions as the same were missing from the Court's physical record at the time of writing this Ruling and could not be traced on the online portal.

Analysis and Determination

12. Evidently, the singular issue for determination is whether the Claimant Union has locus standi to bring the instant suit on behalf of the grievant.
13. It is the Respondent's contention that there is no recognition agreement to enable the Claimant have locus to represent the grievant.
14. Section 54(1) of the [Labour Relations Act](#) provides as follows:

“ 54.

(1) An employer, including an employer in the public sector, shall recognise a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees.”
15. My construction of the above statutory provision is that recognition of a trade union is only for purposes of collective bargaining. It has nothing to do with the representation of members of a trade



union in legal proceedings. As such, the absence of a recognition agreement cannot deny an employee representation by a trade union.

16. To this end, it is this Court's finding that the Respondent's argument that the Claimant lacks locus standi to move the Court on behalf of the grievant owing to lack of a recognition agreement does not hold water.

17. In so finding, the Court is guided by the case of *Modern Soap Factory v Kenya Shoe and Leather Workers Union* [2020] eKLR, where the Court of Appeal held that:

“In our judgment, we can see no reason why a registered union, whose constitution so empowers, should not have standing to institute a claim on behalf of its members and to represent its members in court.... We can see no reason therefore to fault the conclusion by the Judge that the respondent has locus standi to institute the claims on behalf of its members. That said, whether an employee is a member of a union is a question of fact. Where there is a contest as to whether an employee is a member of a union, evidence would be required to settle that question...A recognition agreement is defined under Section 2 of the *Labour Relations Act* as an agreement in writing made between a trade union and an employer, group of employers or employers' organisation regulating the recognition of the trade union as the representative of the interests of unionisable employees employed by the employer or by members of an employers' organisation. It is a bilateral agreement between a trade union and an employer on the basis of which the trade union engages with the employer regarding the terms and conditions of employment of its members. It is not the basis upon which the trade union represents its members in court..”

18. The Court adopts and reiterates the determination in the above authority which is binding.

19. Further to the foregoing, it is worth pointing out that Rule 63(1) of the *Employment and Labour Relations* (procedure) Rules 2024, permits trade unions to represent their members by filing and acting in the suits accordingly. As such, the grievant was well within her rights to be represented by the Claimant Union. Such representation had no bearing on the existence of a recognition agreement between the Claimant Union and the Respondent.

20. In light of the foregoing, I am satisfied that the Claimant Union has locus standi to represent the grievants as it has in the instant case.

21. The total sum of my consideration is that the preliminary objection dated 15th June 2024 is disallowed with an order that costs shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF NOVEMBER, 2024.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Mr. Nyando (Industrial Relations Officer)

For the Respondent No appearance

Court Assistant Millicent

ORDER



In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

