



Kenya National Union of Breakdown Recovery Commuters & Freight Agency Workers Union v Holiday Cars & Tours Limited; Transport Workers Union (TAWU) (Interested Party) (Cause E619 of 2022) [2023] KEELRC 2596 (KLR) (26 October 2023) (Ruling)

Neutral citation: [2023] KEELRC 2596 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E619 OF 2022
L NDOLO, J
OCTOBER 26, 2023**

BETWEEN

KENYA NATIONAL UNION OF BREAKDOWN RECOVERY COMMUTERS & FREIGHT AGENCY WORKERS UNION CLAIMANT

AND

HOLIDAY CARS & TOURS LIMITED RESPONDENT

AND

TRANSPORT WORKERS UNION (TAWU) INTERESTED PARTY

RULING

1. This ruling flows from the Claimant’s Notice of Motion dated 5th September 2022, seeking the following orders:
 - a. An order restraining the Respondent from coercing and/or intimidating the Claimant’s members on account of their association with the Claimant Union;
 - b. An order restraining the Respondent from victimising the Claimant’s members who have declined to accept the unlawful directive by the Respondent to withdraw from the Claimant Union;
 - c. An order compelling the Respondent to comply with Gazette Notice No 104 of 2024 and deduct union dues from the Claimant’s members in the Respondent’s employment and remit the same to the Claimant’s gazetted account;
 - d. A declaration that the withdrawal forms filled by the Claimant’s members are null and void;



- e. An order compelling the Respondent to comply with Section 20 of the [Employment Act](#) and issue the Claimant's members with payslips.
2. The Motion is supported by an affidavit sworn by the Claimant's General Secretary, Titus W. Khaemba and is based on the following grounds:
 - a. That on diverse dates, between March and April 2022, the Respondent's employees exercised their constitutional right to associate with the Claimant Union by enrolling on the Claimant's check-off forms;
 - b. That on 27th April 2022 and pursuant to Gazette Notice No 104 of 2022, the Claimant served the Respondent with the check-off forms duly filled by the Claimant's potential members to confirm their enrolment and willingness to pay union dues by deduction, in accordance with Section 48 of the [Labour Relations Act](#);
 - c. That the Respondent declined to comply with the Gazette Notice, prompting the Claimant to report a trade dispute. The Claimant accuses the Respondent of frustrating the conciliation process;
 - d. That on 19th August 2022, the Claimant wrote to the Respondent asking for adjustment of the Claimant's members' wages, in compliance with minimum wage guidelines, and to issue payslips but the Respondent did not comply;
 - e. That on 30th August 2022, the Respondent issued a circular to its Line Managers, forwarding union withdrawal forms to be administered to the Claimant's members. The Claimant terms this as a way of frustrating the signing of a Recognition Agreement as requested in its letter dated 25th August 2022;
 - f. That on 1st September 2022, the Respondent's Line Managers ordered the Claimant's members to fill and sign the withdrawal forms, with a threat of termination of employment if they did not comply;
 - g. That the Claimant's membership at the Respondent has surpassed the simple majority stipulated at Section 54 of the [Labour Relations Act](#).
 3. The Interested Party filed a Reply dated 22nd June 2023, stating that the Claimant has no stake in the sector in which the Respondent operates.
 4. The Interested Party asserts that the Respondent is a Tour Company operating in the sector covered by the Interested Party and that there exists a valid Recognition Agreement between the Interested Party and the Respondent.
 5. The Interested Party further states that the Claimant has no members within the Respondent's establishment, adding that the check-off forms presented by the Claimant are irregular because at the time they were completed, the Claimant was not authorised to recruit members.
 6. 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.
 7. Further, the issues raised in the application are similar to those in the Memorandum of Claim. Indeed, if the prayers sought in the application were to be granted, the entire claim will have been spent at the interlocutory stage.



8. For these reasons, the Claimant's application dated 5th September 2022 is declined with costs in the cause.
9. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 26TH DAY OF OCTOBER 2023

LINNET NDOLO

JUDGE

