



**Transport Workers Union v Green Line Company Limited (Cause E447 of 2023) [2023] KEELRC 2819 (KLR) (9 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2819 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E447 OF 2023  
L NDOLO, J  
NOVEMBER 9, 2023**

**BETWEEN**

**TRANSPORT WORKERS UNION ..... CLAIMANT**

**AND**

**GREEN LINE COMPANY LIMITED ..... RESPONDENT**

**RULING**

1. In its memorandum of claim dated May 25, 2023, the claimant cites the issue in dispute as ‘unfair redundancy and refusal to pay severance benefits to Mr Joseph Muthama Kalandi-(Bus driver) by the respondent company.’
2. In its statement of response dated June 29, 2023, the respondent gave notice that it would raise a preliminary objection on the ground that there is no recognition agreement between the claimant and the respondent, pursuant to section 54 of the *Labour Relations Act*.
3. The respondent reiterated its objection by notice dated July 3, 2023 asking that the claimant’s claim be struck out.
4. The claimant filed a response to the preliminary objection dated September 19, 2023, stating as follows:
  - a. That the preliminary objection is a non-issue trying to circumvent justice to the grievant and a waste of judicial time;
  - b. That a recognition agreement is not a prerequisite condition when dealing with an individual member’s dispute; it is only necessary when negotiating a Collective Bargaining Agreement (CBA) as provided under section 54 of the *Labour Relations Act*;
  - c. That trade disputes are dealt with within section 48 of the *Employment Act* and section 62 of the *Labour Relations Act*;



- d. That pursuant to article 41 of the [Constitution of Kenya](#) , and sections 4 and 5 of the [Labour Relations Act](#), every employee has a right to join a union of their choice and to be represented by such union;
  - e. That the grievant was the claimant’s member under section 52 of the [Labour Relations Act](#) and has the right to be represented by the claimant. The respondent had been notified as such during the pre-court dispute handling process;
  - f. That this Court has pronounced itself on the same issue in Cause No 745 of 2010: *Transport Workers Union v DHL Global Forwarding (K) Ltd* and Cause No 377 of 2013: *Kenya National Private Security Workers Union v Lavington Security Ltd*.
5. As stated by the claimant, this court has had previous occasion to consider the issue of locus standi of trade unions to bring claims against employers on behalf of union members, even where there is no recognition agreement.
  6. In its decision in [Kenya National Private Security Workers Union v Lavington Security Limited](#) [2013] eKLR the Court stated thus:
 

“ This Court has pronounced itself on this issue in the case of *Transport and Allied Workers Union v DHL Global Forwarding (K) Limited* (Industrial Cause No 745 of 2010) as follows:  
The [Labour Relations Act](#) and the *Industrial Court (Procedure) Rules* confer a special jurisdiction on Trade Unions in industrial litigation where a Trade Union may sue in its own name on behalf of its members who are aggrieved by the action of their employer.”
  7. This Court considered the same issue in [Kenya Shoe & Leather Workers Union v Modern Soap Factory](#) [2018] eKLR and returned the following verdict:
 

“ ....a trade union has many roles and although collective bargaining which is premised on recognition is a premiere one, the other roles such as association generally and representation in particular, are equally important. What is clear is that section 45(1) of the [Labour Relations Act](#) creates no necessary nexus between recognition and representation.”
  8. This latter case went on appeal to the Court of Appeal and in its decision in [Modern Soap Factory v Kenya Shoe and Leather Workers Union](#) [2020] eKLR the Appellate Court affirmed the decision, stating:
 

“ Article 41 of [the Constitution](#) of Kenya on labour relations protects the right of every person to fair labour practices and the right, among others, to join a trade union, which in turn has the right to determine its activities. Article 258 of the [Constitution](#) on enforcement of the [Constitution](#) provides in article 258(2)(d) that an association acting in the interest of one or more of its members may institute proceedings where the [Constitution](#) is contravened or threatened with contravention...

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. It is not a matter that is amenable for determination on the basis of a preliminary objection...



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. As the learned Judge correctly stated, the two roles are distinct.”

9. Supported by the clear pronouncement by the Court of Appeal, whose decisions are binding on this court, I have no hesitation in reaching the conclusion that the respondent's preliminary objection has no basis in law.
10. The preliminary objection is therefore overruled with costs in the cause.
11. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 9TH DAY OF NOVEMBER 2023**

**LINNET NDOLO**

**JUDGE**

**Appearance:**

**Mr. Ndege (Union Representative) for the Claimant**

**Mr. Ojienda for the Respondent**

