



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAIROBI
CAUSE NUMBER 59 OF 2016

BETWEEN

TRANSPORT WORKERS UNIONCLAIMANT

VERSUS

NABICO ENTERPRISES RESPONDENT

Rika J

Court Assistant: Emmanuel Kiprono

Mr. Ndege Industrial Relations Officer, for the Claimant.

Mr. Nga'ng'a Advocate for the Respondent

JUDGMENT

1. This Claim is indicated erroneously, as coming up for Ruling on 17th March 2022.
2. The record indicates it was due for hearing on 21st October 2021, when the Claimant informed the Court, that it would adopt its Pleadings and Documents, without calling Witnesses.
3. The Court acceded to the prayer and directed Parties to file and exchange Submissions within a total of 30 days. They confirmed filing of Submissions at the last mention on 15th December 2021.
4. The Claim comes up for Judgment.
5. The Claimant, in the Statement of Claim dated 25th January 2016 states that the Respondent deals in distribution and supplies of home appliances. Most of its Employees are drivers, salesmen and loaders. The Claimant recruited a simple majority of Respondent's Unionisable Employees. It submitted check-off forms, executed by 30 Employees to the Respondent. The forms are exhibited. The Respondent declined to effect the forms. It also declined to sign a Recognition Agreement, as submitted by the Claimant. There is no rival Union, and the Claimant has recruited more that 75% of the Respondent's Unionisable Employees.
6. The Claimant seeks Orders that: -
 - a. Respondent is compelled to effect trade union deductions under Section 48 and 50 of the Labour Relations Act, effective August 2013.
 - b. The Respondent's Employees be protected from unfair termination.
 - c. The Respondent is compelled to sign Recognition Agreement with the Claimant Union.

d. Parties to sign a Collective Bargaining Agreement.

7. The Respondent filed its Statement of Response dated 7th February 2017. It does not agree that most of its Employees are drivers, salesmen and loaders. It denies that the Respondent recruited a simple majority of its Unionisable Employees. The Respondent states its core business is in retail, not transport. It denies receipt of check-off forms. There was no verification of the forms. The Claim has no merit. The Respondent prays for its dismissal.

8. Parties reiterated the contents of their Pleadings in their Submissions.

The Court Finds: -

9. The Claim is not supported by adequate evidence, to warrant grant of the prayers pleaded by the Claimant.

10. The dates when some of the Employees are alleged to have joined the Claimant Union, are not indicated in the forms submitted to the Court.

11. Their Personnel Numbers on the forms are not shown.

12. It is difficult to tell, without either oral or affidavit evidence of the Employees, whether they were still in employment, at the time of the hearing. Hearing took place, 6 years after the filing of the Claim. Labour is highly mobile, and the Claimant should have assisted the Court, with the current employee data.

13. The Claimant merely states it recruited 30 Employees. It does not disclose, what was the total Unionisable Workforce at the Respondent. It is inadequate to cite a number of recruited Employees, without relating it to the total Unionisable Workforce. How would the Court make out, if the Claimant has recruited 50% + 1 of the Unionisable Employees, without being given the total number of Unionisable Employees?

14. There is no designation given to the Employees in the forms. There is no breakdown of their roles. The Court cannot say that they were all Unionisable or not.

15. While the Employees are said to have signed the forms, between 7th May 2015 and 15th July 2015, and while the forms are alleged to have been forwarded to the Respondent on 18th August 2015, prayer [a] in the Claim is for remittance of trade union dues by the Respondent to the Claimant, effective August 2013. What is the basis of this claim from the year 2013?

16. The check-off forms on their own, are not conclusive, that the Claimant deserves recognition by the Respondent.

17. The Claimant has not satisfied the requirements of Sections 48, 50, 54 and 57 of the Labour Relations Act, to merit grant of the prayers sought.

IT IS ORDERED: -

a. The Claim is declined.

b. No order on the costs.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT MALINDI,
UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS
17TH DAY OF MARCH 2022.**

JAMES RIKA

JUDGE