



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAIROBI
CAUSE NUMBER 750 OF 2017

BETWEEN

**KENYA SHIPPING, CLEARING AND
WAREHOUSES WORKERS UNION.....CLAIMANT**

VERSUS

MYNER EXPORTS LTD.....RESPONDENT

RULING

1. The Claimant filed the Statement of Claim, on 20th April 2017.
2. It seeks on behalf of its Members, Employees of the Respondent, that the Respondent is compelled to convert the Employees from irregular to regular Employees; that the Respondent is compelled to pay the Employees their wages regularly, at the end of each month; and the Respondent to pay costs of the Claim.
3. The Respondent filed a Notice of Preliminary Objection, dated 14th September 2021, stating that the Respondent has no *locus standi* to file the Claim. It is not recognized by the Respondent under Section 54 of the Labour Relations Act.
4. Parties agreed to have the Objection considered and determined on the strength of their Written Submissions. These were confirmed to have been filed at the last mention in Court, on 16th November 2021.

The Court Finds: -

5. Section 54 of the Labour Relations Act, requires an Employer to recognise a Trade Union *for purposes of collective bargaining, if that Trade Union represents the simple majority of Union sable Employees.*
6. Recognition has nothing to do with legal representation before a Court of Law.
7. Legal Representation in Court, of an Employee, a Member of a particular Trade Union, is allowed firstly, by the internal constitution of that Trade Union. It is an associational benefit, drawn by the Member, through his/her subscription. The Trade Union has the associational standing, under its constitution, to represent its Member.
8. Secondly, Section 22 of the E&LRC Act, allows Parties to act in person or to be represented by an Advocate, an Office-Bearer or Official of the Party's Trade Union or Employers' Organisation and, if the Party is a juristic person, by a Director or an Employee specially authorized for that purpose.
9. Thirdly, the General Secretary of a Trade Union, is an Authorized Representative of the Trade Union. He or his designate appointed in writing, has the associational standing to represent Trade Union Members on matters relating to Members' rights and interests, as well as to matters relating to the Trade Union's own rights and interests.
10. The Labour Relations Act, and the Trade Disputes Act before it, have long acknowledged associational standing. Article 22 of the Constitution has given a ringing endorsement to associational standing. The Trade Union has *locus standi* in this dispute.

IT IS ORDERED: -

a. Preliminary Objection is declined.

b. Costs in the cause.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT MOMBASA, UNDER MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 3RD MARCH 2022.

James Rika

Judge