



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT NAIROBI**  
**CAUSE NUMBER 45 OF 2020**

**BETWEEN**

**KENYA NATIONAL AVIATION WORKERS UNION ..... CLAIMANT**

**VERSUS**

**KLM ROYAL DUTCH AIRLINES / AIRFRANCE ..... RESPONDENT**

**AND**

**TRANSPORT WORKERS UNION-KENYA ....INTENDED INTERESTED PARTY**

**RULING**

1. The Claimant Union filed an Application 29<sup>th</sup> January 2020, asking the Court to grant an order of mandatory injunction, compelling the Respondent to recognize the Claimant. It is also sought through an order of mandatory injunction to have the Respondent compelled to deduct and remit trade union dues in favour of the Claimant. The Application is anchored on the Affidavit of Claimant's General Secretary Moses Ndiema, sworn on 28<sup>th</sup> January 2020.
2. Mr. Ndiema deposes that his Union has recruited 34 Employees of the Respondent, representing more than 50% of the total Unionisable Employees.
3. The Intended Interested Party seeks to be joined to the Claim. It filed an Application dated 14<sup>th</sup> February 2020 seeking joinder as an Interested Party. The Application is supported by the Affidavit of its General Secretary Dan Mihadi, sworn on 14<sup>th</sup> February 2020.
4. Mr. Mihadi deposes that his Union indeed already has a Recognition Agreement with the Respondent. The Agreement which is exhibited in the Affidavit of Mr. Mihadi, was signed between the Intended Interested Party and the Respondent, on 28<sup>th</sup> November 2003. It was followed by a CBA, signed on 16<sup>th</sup> March 2017.
5. The Respondent allies itself with the position of the Intended Interested Party.
6. The dispute went for conciliation before Labour Officer Nelson S. Kimeu. In his Report dated 10<sup>th</sup> December 2020, Kimeu found in favour of the Claimant, directing that the Respondent accords recognition to the Claimant.
7. The 2 Applications are the subject matter of today's Ruling. The Court recorded in error, in a virtual session on 9<sup>th</sup> April 2021, that Judgment would be delivered on 23<sup>rd</sup> July 2021. This error is corrected and the record will show, that the matter is scheduled for a Ruling, on the 2 Applications.

**The Court Finds:** -

8. There is no reason why Recognition should be conferred upon the Claimant Union, through an order of mandatory injunction. There is a Statement of Claim on record, where recognition is the main prayer. The Claimant Union should prosecute the Claim, rather than seek premature recognition, without the benefit of a full hearing being granted to the Parties.
9. There is also an important issue to be determined, before recognition can be granted. This relates to the Intended Interested Party. It must be considered first whether it has disclosed sufficient interest, to be allowed into the proceedings. Grant of mandatory injunction without

determining the position of the Intended Interested Party, would foreclose any role by the Intended Interested Party.

10. Which brings the Court to the Application for joinder, filed by the Intended Interested Party. There is a Recognition Agreement executed between the Intended Interested Party and the Respondent. There is a rebuttable presumption in law, as held in ***Mombasa Maize Millers Limited v. Bakery, Confectionary, Food Manufacturing and Allied Workers & Another [2018] e-KLR***, that this Recognition Agreement is still in validity. The Claimant Union must rebut this presumption through evidence. There is also evidence of an existing CBA, concluded between the Intended Interested Party and the Respondent. To grant recognition to the Claimant Union at this stage, would allow the Claimant Union to embark on a process of negotiating a CBA at a workplace where another CBA is already in force.

11. This would be a harbinger of industrial chaos and instability at the Respondent's workplace.

12. The Report of the Conciliator is not binding, and cannot be adopted summarily, as the Judgment of the Court. This would be the result, were the Court to allow the orders of mandatory injunction pursued by the Claimant.

**IT IS ORDERED: -**

***a. The Application by the Claimant seeking orders in the nature of mandatory injunctions is declined.***

***b. The Intended Interested Party is joined as an Interested Party.***

***c. Parties to file and exchange their Pleadings, Documents, Witness Statements and List of Issues within the next 30 days.***

***d. They shall take a date for mention at the registry, with a view to confirming compliance with all pre-trial procedures, and for scheduling the Claim for full hearing.***

**Dated, signed and released to the Parties at Nairobi, under Ministry of Health and Judiciary Covid-19 Guidelines, this 23<sup>rd</sup> July 2021.**

**James Rika**

**Judge**