



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 309 OF 2019**

(Before Hon. Lady Justice Maureen Onyango)

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

**VERSUS**

**SUPER METRO LIMITED.....RESPONDENT**

**JUDGMENT**

The claimant is a trade union registered under the Labour Relations Act to represent workers in the transport and allied sectors. The respondent is a public service transporters society.

It is the claimant's case that it has recruited 205 of 300 unionisable employees of the respondent and forwarded check off forms to the respondent to effect monthly trade union dues in accordance with Section 48 and 50 of the Labour Relations Act by letter dated 29<sup>th</sup> November 2018. Copies of the check off forms are exhibited to the memorandum of claim as annexure 1. The claimant further states that it forwarded a copy of a Model Recognition Agreement to the respondent for signature within Section 45 of the Labour Relations Act.

The claimant avers that the respondent declined to either deduct and remit the union dues or to sign the recognition agreement, denying the existence of an employment relationship between the respondent and the employees. The claimant avers that the respondent has since resorted to intimidating the employees in a bid to coerce them to revoke union membership, an act which is unlawful and amounts to unfair labour practice. The claimant avers that 5 employees have been unfairly terminated. The names of the employees are –

1. Paul Njuguna Ngumi ID. No. 24275830 Driver
2. Daniel Kinuthia Ngungi ID. No. 11448174 Driver
3. Joseph Mbutu Mutisya ID. No. 23501124 Driver
4. Elicanah Kibugi Mwaniki ID. No. 23444430 Conductor
5. Jeremiah Mburu Kimani ID. No. 7096729 Driver

It is the claimant's averment that this is contrary to Article 41 of the Constitution, Sections 4 and 5 of the Labour Relations Act and Section 5.1. and 9 of the NTSA (Operations of Public Service Vehicles) Regulations, 2014.

The claimant states there is no rival trade union claiming to represent the employees of the respondent.

The claimant prays for enforcement of Section 54 of the Labour Relations Act by making the following orders –

1. That, the respondent be ordered to deduct and remit trade union monthly dues from all unionized employees within Sections 48 and 50 of the Labour Relations Act - 2007.
2. That, the respondent be ordered to enter into and sign a recognition agreement with the claimant.

Together with the memorandum of claim the claimant filed a notice of motion in which he seeks the following orders –

1. Spent

2. That, pending the hearing and determination of this application, the respondent be ordered to deduct and remit trade union monthly dues in respect to all its employees who are the claimant union members.

3. That; the respondent be ordered to recognize the claimant union.

4. That; this. Court do issue such other orders as it may deem fit to meet the end of justice.

The respondent filed a replying affidavit of NELSON MWANGI NDUKI, a director and shareholder of the respondent, in which he deposes that the claim and application are incompetent and bad in law, a gross abuse of the court process, brought in bad faith and unmeritorious.

Mr. Nduki deposes that the respondent is a limited liability company incorporated in 2013. That its mandate is to maintain operational responsibility over public service vehicles that it runs on a day to day basis pursuant to the terms of a contract or franchise agreement with the registered owners of the said vehicles. That for ease of management of the vehicles, the respondent renders various services to the investors who are the owners of the said vehicles to wit –

- i. Vet on behalf of the investors Drivers and conductors.
- ii. Discipline drivers and conductors on behalf of the investors.
- iii. Collect and pay on behalf of the investors N.H.I.F and N.S.S.F dues for their drivers and conductors.
- iv. Ensure that the drivers and conductors wear the prescribed uniform and identification badge while at work.
- v. Ensure that the drivers of the vehicle adhere to the approved routes, schedule and drop off and pick up points.
- vi. Ensure that passengers are treated courteously.
- vii. Ensure that music played does not exceed the prescribed limits in the course of the journey.

That the Respondent collects a sum of Kenya Shillings Fifty (Kshs.50/-) daily from each public service vehicle (P.S.V) vehicle for the purpose of paying the investors N.S.S.F and N.H.I.F contribution for the drivers and conductors.

That the Respondent has in its employment twenty nine (29) employees whom it pays salaries and wages at the end of every month.

That the Respondent neither owns any P.S.V vehicles nor pays any salaries or wages of any drivers who drive the vehicles it manages on behalf of the investors. That it is only the drivers and conductors who can confirm the person who pay their salaries and wages.

Mr. Nduki deposes that the respondent has been wrongly sued. That it informed the claimant about its relationship with the public service vehicle owners by its letter dated 11<sup>th</sup> December 2018 upon receiving the check off forms.

Mr. Nduki deposes that the respondent only disciplines drivers and conductors for breach of NTSA guidelines in relation to crew uniforms work ethics and discipline. He deposes that the respondent is therefore not in a position to deduct and remit union dues or sign recognition agreement with the claimant.

When the matter came up for directions it was referred to the Ministry of Labour to prepare a report. In the report the Ministry of Labour made the following report –

“IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF

KENYA AT NAIROBI CAUSE NO 309 OF 2019

TRANSPORT WORKERS UNION - CLAIMANT

SUPER METRO LIMITED - RESPONDENT

ISSUE IN DISPUTE

- i. Refusal to remit monthly trade union dues from the claimant members
- ii. Refusal by the respondent to sign a recognition agreement with the claimant within section 54 of the labour relations act 2007.

UNION (CLAIMANT) SUBMISSION

- That Transport Workers Union is a registered trade union with the mandate to represent unionisable employees in the transport and allied sectors in Kenya.
- That super metro (respondent) is a registered PSV transporters Sacco.
- That the claimant recruited a simple majority of the respondent employees - 205 out of 300 unionisable employees
- That they forwarded the signed check off system forms to the responded (super metro ltd) to effect the union dues deductions in accordance to section 48 and 50 of the Labour Relations Act 2007.
- That they also forwarded model of recognition agreement for signing within section 54 of the Labour Relations Act 2007.
- That the respondent (super metro Ltd) has declined to effect the reductions of trade union dues and sign the recognition agreement.
- The union went further to state that there exists an employee-employer relationship since super metro remits all relevant statutory dues for all the employees.
- That employees contribute 50 shillings per days that is used to pay the statutory deductions.
- That the employees have been given badges as mode of identification that they are super metro employees.
- That on disciplinary issues it's the responded who does it. a clear indication that he is the employer.

#### CLAIMANT PRAYERS

1. That the respondent should remit union dues from all unionized employees within Section 48 and 50 of the Labour Relations Act, 2007, the way he does remit the other statutory deductions.
2. That the respondent to sign a recognition agreement with the claimant.

#### SUBMISSION BY RESPONDENT (SUPER METRO LIMITED)

- That the company does not have its own vehicles.
- That the company offers only management services to vehicles owners
- That the company has a lean staff of 29 employees none of whom is on the list of check off produced by the union.
- That the list submitted by the union for deduction of union dues is for conductors and drivers -who are not their employees.
- That there is no employer-employee relationship between super metro and the drivers and their turn boys/conductors
- That owners of the vehicles managed by super metro ltd employees the drivers and conductors
- That there are no structural pay of any salary or wages paid to drivers and conductors by super metro ltd.
- That the owners of the vehicles gives the company a management fee while the drivers and conducts contribute 50 shillings per day towards statutory dues.
- That it is the owners of the vehicle who pays V2 of the N.S.S.F as required by the N.S.S.F Act not super metro ltd.
- That the respondent has a contract with the owners of the vehicles not with any driver for conductor.

#### FINDINGS

Employment Act, 2007 defines an employee as “a person-employed for wages or salary and includes an apprentice and indentured learner.

The same Act define an employer as “any person who, public body, firm, operation or company who or which has entered into contract of service to employ any individual and included the agent foreman, manager or factor of such person, public body, firm, co-operation or company.

- The respondent (super metro ltd) has not entered into any contract of service by the drivers and conductors.
- There is no oral, written or implied contract between the respondent and the drivers or conductors.
- The drivers and conductors are not paid any wages or salary by the respondent.
- The respondent does not make any deductions since he does not pay them any wages/salary
- The drivers remit 50 shillings to the Sacco to cover for statutory payments.
- The drivers and conductors only use the respondent trading name to operate the owners’ vehicles who have entered a contract with the super metro ltd, as it is a requirement by NTSA.
- None of the 29 staff of the super metro ltd respondent has been recruited by the union.
- Remittance of statutory dues and having a badge alone can’t qualify super metro ltd to be the employer.

#### RECOMMENDATION

Following the submission by both parties coupled together with the findings I recommend that super metro limited (respondent) is not an employer of the drivers and conductors alleged to have been recruited by Transport workers Union, so the issue of deductions and remittances of union dues and signing of recognition agreement cannot hold.

The union is allowed to recruit person employed by the respondent.

SIGNED

Grace Weresa

FOR: LABOUR COMMISSIONER”

I have considered the report and the findings and I am in agreement with the Labour Officer that there is no employment relationship between the claimant union and the respondent who only manages the employees on behalf of investors whose PSV vehicles the respondent manages. The respondent does not recruit the employees and does not pay their salaries. It only collects Kshs.50/- per day, per vehicle for purposes of payment of statutory dues, specifically NSSF and NHIF, on behalf of the investors,.

I therefore find that there is no merit in the claim and dismiss the same.

Each party shall bear its costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 6<sup>TH</sup> DAY OF MARCH 2020**

**MAUREEN ONYANGO**

**JUDGE**