



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1345 OF 2018**

*(Before Hon. Lady Justice Maureen Onyango)*

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

**VERSUS**

**ETIHAD AIRWAYS.....RESPONDENT**

**JUDGMENT**

The Claimant is a trade union registered in Kenya under the Labour Relations Act with mandate to represent workers in the transport sector whereas the Respondent is a registered airline conducting business in Kenya.

The Claimant filed suit vide a Memorandum of Claim dated 31<sup>st</sup> August, 2018 seeking enforcement of a recognition agreement between them and the Respondent.

The Claimant alleged that they recruited and forwarded signed check off system forms to the Respondent on 29<sup>th</sup> September, 2017 for implementation of trade union dues in accordance with section 48 and 50 of the Labour Relations Act, 2007. That the Respondent is already remitting monthly dues to the Claimant from its employees who are union members.

Further that the Claimant forwarded a model Recognition Agreement for signing by the parties but the Respondent has without any reason whatsoever declined to sign the Recognition Agreement contrary to the provisions of section 54 of the Labour Relations Act, 2007.

That despite many attempts to address the issue with the Respondent, the Respondent has declined to sign and enter into the Recognition Agreement.

The Claimant avers that they reported the issue to the Ministry of Labour as required by law but the Respondent further declined to sign the Recognition Agreement which led to the Ministry issuing a Certificate of Unresolved Dispute. The Claimant prays for the Respondent to be ordered to sign the Recognition Agreement with the Claimant as per section 54 of the Labour Relations Act, 2007.

The Respondent despite being properly served has neither entered appearance nor filed a Response to the Claim and thus the matter proceeded as an undefended claim.

**Submissions**

The Claimant submits that the Respondent's employees are their members and they have recruited 90% of them. The claimant submits there is no rival union claiming to represent the Respondent's employees. That in compliance with Section 54 of the Labour Relations' Act it sent a standard recognition agreement to the Respondent on 29<sup>th</sup> November 2017 which the respondent confirmed receipt of by letter of 7<sup>th</sup> December 2017. That in the said letter the Respondent asked for more time to consider the Agreement.

That the Respondent did not respond resulting in the matter being reported to the Ministry of Labour. A conciliator was appointed who met with them thrice without any progress. That the Claimant needs to negotiate a CBA and it cannot do so without a recognition agreement. The claimant prays for the Claim to be allowed.

**Determination**

From the Memorandum of Claim and the documents annexed thereto the issue for determination is whether the Claimant Union has attained

the requirements for recognition. Section 54 of the Labour Relations Act provides for recognition as follows-

**54. Recognition of trade union by employer**

**(1) An employer, including an employer in the public sector, shall recognise a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees.**

**(2) A group of employers, or an employers' organisation, including an organisation of employers in the public sector, shall recognise a trade union for the purposes of collective bargaining if the trade union represents a simple majority of unionisable employees employed by the group of employers or the employers who are members of the employers' organisation within a sector.**

**(3) An employer, a group of employers or an employer's organisation referred to in subsection (2) and a trade union shall conclude a written recognition agreement recording the terms upon which the employer or employers' organisation recognises a trade union.**

**(4) The Minister may, after consultation with the Board, publish a model recognition agreement.**

**(5) An employer, group of employers or employers' association may apply to the Board to terminate or revoke a recognition agreement.**

**(6) If there is a dispute as to the right of a trade union to be recognised for the purposes of collective bargaining in accordance with this section or the cancellation of recognition agreement, the trade union may refer the dispute for conciliation in accordance with the provisions of Part VIII.**

**(7) If the dispute referred to in subsection (6) is not settled during conciliation, the trade union may refer the matter to the Industrial Court under a certificate of urgency.**

**(8) When determining a dispute under this section, the Industrial Court shall take into account the sector in which the employer operates and the model recognition agreement published by the Minister.**

Section 54 (1) of the Labour Relations Act No. 14 of 2007 states as follows:

**“An employer, including an employer in the public sector, shall recognize a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees.”**

From the above provisions the main requirement for a recognition is that the trade union must be representative of a simple majority of the unionisable employees. The Claimant herein avers that it has recruited 90% of the Respondent's unionisable workers and to that end it has annexed 9 check off forms signed by 9 employees in support of this assertion. There is however no evidence before the Court of how many unionisable employees are engaged by the Respondent and it is therefore not possible to determine whether the evidence attached is representative of a simple majority.

For this reason I find that the claimant has not proved its case on a balance of probabilities with the result that the claim is dismissed.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 8<sup>TH</sup> DAY OF FEBRUARY 2019**

**MAUREEN ONYANGO**

**JUDGE**