



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT MOMBASA**

**CAUSE NUMBER 142 OF 2018**

**BETWEEN**

**AMALGAMATED UNION OF KENYA METAL WORKERS....CLAIMANT**

**VERSUS**

**JAYKAY MECHANICAL ENGINEERING LIMITED.....RESPONDENT**

Rika J

Court Assistant: Benjamin Kombe

General- Secretary for the Claimant Union

C.M. Advocates LLP for the Respondent

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**JUDGMENT**

1. The Claimant seeks to have the Respondent compelled to negotiate Collective Bargaining Agreement. It is also prayed that the Respondent is ordered to deduct from Employees' salaries and remit to the Claimant, trade union dues. The Claimant, in its Statement of Claim filed on 19<sup>th</sup> March 2018, states that Parties have a valid Recognition Agreement. This Agreement was executed by the Parties on 6<sup>th</sup> June 2016, after a Judgment was delivered by the Court in E&LRC Cause Number 389 of 2013, compelling the Respondent to grant the Claimant recognition. The Respondent has failed, after executing Recognition Agreement, to negotiate CBA and deduct and remit trade union dues.

2. The Respondent filed its Statement of Reply on 20<sup>th</sup> April 2018. It is conceded that there was litigation between the Parties, which resulted in Judgment in favour of the Claimant, in Cause Number 389 of 2013. The Respondent executed Recognition Agreement in obedience to the orders of the Court. It has not negotiated and concluded CBA because most Employees have disowned the Claimant, while others left employment. The Respondent states the Claimant has not met the requirement of having a simple majority of Unionisable Employees working at the Respondent's bargaining unit. It is stated that the dispute was taken before the Conciliator, who found that the Claimant does have a simple majority.

3. On 11<sup>th</sup> October 2018, Parties recorded a consent order, withdrawing Claimant's interlocutory application, and undertaking to have the main Claim, considered and determined through the Pleadings, Documents and Submissions. They confirmed filing of Submissions at the last mention on 17<sup>th</sup> December 2018.

**The Court Finds: -**

4. Parties were heard on recognition dispute in Mombasa E&LRC Cause Number 389 of 2013. Judgment was delivered on 7<sup>th</sup> December 2014, allowing the Claim for recognition. Parties executed Recognition Agreement on 6<sup>th</sup> June 2016.

5. That Agreement remains in force. It has not been amended or terminated, under the terms agreed by the Parties. It has not been terminated or revoked by the National Labour Board, through an application made by either Party, under Section 54 [5] of the Labour Relations Act 2007. It has not been terminated through an order of the Court.

6. There is no pending dispute about recognition.

7. The Respondent must honour the terms of Recognition Agreement, and Section 54 of the Labour Relations Act. Recognition is granted for purposes of collective bargaining.

8. Parties cannot regurgitate recognition dispute, barely 2 years after signing the Recognition Agreement, and after another dispute was resolved by the Court leading to that Agreement. Judicial work should not be cyclic, where disputes are resolved, only for unsatisfied Parties to endlessly resurrect them, by devious means. It is meaningless for Employees to disown the Union after recognition was granted. Recognition can only be undone, through Section 54 [6] of the Labour Relations Act; or through the terms of the Agreement itself; or through an order of the Court. It does not make sense to execute Recognition today, and tomorrow an Employer requires the Union to show again that it has a simple majority of Unionisable Employees, in order for collective bargaining to commence. The sanctity of the Recognition Agreement must be upheld. Although it is said that recruitment of Employees by the Union is a continuous process, nowhere does the law require the Union to show it has a simple majority at every turn in the collective bargaining cycle. The Court takes a grim view of Employers who conclude Recognition Agreements and fail to register even a single CBA. What is the purpose of recognition? If the Respondent wants to opt out, the law requires the Respondent to do so through the National Labour Board; or through the mechanisms provided for in the Recognition Agreement itself; or through an order of the Court.

9. A Party cannot legally refuse to negotiate and remit trade union dues, during the life of a valid Recognition Agreement.

10. The Court is satisfied that the Claimant has established its case to the required standard.

IT IS ORDERED: -

**a. The Respondent shall enter into collective bargaining with the Claimant, and conclude and register CBA within 90 days of this Judgment.**

**b. The Respondent shall deduct and remit trade union dues with regard to Employees who are Members of the Claimant Union.**

**c. Costs to the Claimant.**

**Dated and delivered at Mombasa this 22<sup>nd</sup> day of March 2019.**

**James Rika**

**Judge**