



**REPUBLIC OF KENYA**  
**IN THE EMPLOYEMENT AND LABOUR**  
**RELATIONS COURT AT MOMBASA**  
**CAUSE NUMBER 201 OF 2017**  
**BETWEEN**  
**KENYA UNION OF PRINTING,**  
**PUBLISHING, PAPER MANUFACTURERS**  
**& ALLIED WORKERS**

.....CLAIMANT

**VERSUS**

**MFJ DOCUMENTS .....**  
**RESPONDENT**

**RULING**

1. In an Application dated 27<sup>th</sup> February 2017, the Claimant seeks an Order, compelling the Respondent to sign a Recognition Agreement with the Claimant, to pave way for collective bargaining; and seeks an Order also, restraining the Respondent from victimizing Claimant's Members. The Application is based on recommendations made by the Conciliator.
2. The Application is supported by the Affidavit of Claimant's General-Secretary Rajabu Mwondi, sworn on 27<sup>th</sup> February 2017.
3. It is opposed through the Replying Affidavit of Respondent's General Manager, Animesh Solanki, sworn on 9<sup>th</sup> March 2017.
4. Parties recorded a Consent Order on 28<sup>th</sup> July 2017, to have the Application considered and determined on the strength of the record. They confirmed filing of Submissions on 16<sup>th</sup> November 2017.

**The Court Finds:-**

5. The main dispute is about Recognition Agreement. It cannot be resolved through an Interlocutory Application. The recommendations made on conciliation, are not conclusive, to be endorsed by the Court as its Judgment summarily, without affording the Parties a hearing. In effect, the Claimant is asking the Court to enter Summary Judgment in its favour, in accordance with the recommendations of the Conciliator. This is not contemplated by the Labour Relations Act 2007, or by the Rules which govern proceedings of this Court.

6. There are issues to be determined upon trial. These issues are clearly stated in the Affidavits filed by the Parties. The proceedings and recommendations of the Conciliator can only be a part of the evidence to be availed to the Court, in considering, and making a determination of, the substantive dispute. Recommendations of Conciliators are not conclusive and do not compromise adjudicatory processes.

7. The Court agrees with the Submission of the Respondent, as argued in *East African Portland Cement Company Limited v. Attorney-General & Another [2013] e-KLR* that, interim orders are not meant to finally determine the substantive dispute. The decisions cited by the Claimant in urging the Court to grant the Application, relate to Orders of recognition made, after hearing the respective Parties in full. Nowhere did the Court grant an Order for recognition through an Interlocutory Application, based on the findings and recommendations of a Conciliator.

IT IS ORDERED:-

*a) The Application filed by the Claimant dated 27<sup>th</sup> February 2017 is rejected.*

*b) Costs in the Cause.*

**Dated and delivered at Mombasa this 15<sup>th</sup> day of February 2018.**

**James Rika**

**Judge**