

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 1239 OF 2014

TRANSPORT WORKERS UNION.....CLAIMANT

VERSUS

CROWN BUS SERVICE LIMITED.....RESPONDENT

RULING

1. This ruling proceeds from a preliminary objection raised by the Respondent by notice dated 3rd September 2014. The substance of the objection is that the Claimant has no *locus standi* to bring this action on behalf of its member, John Kamotho Kathama.
2. Submitting on behalf of the Respondent, Mr. Osundwa opined that there was no relationship between the Union and the Respondent. He cited Section 87 of the Employment Act, 2007 which provides for resolution of disputes between employees and employers.
3. Further, Counsel for the Respondent submitted that Section 22 of the Employment and Labour Relations Court Act, which deals with representation before this Court does not confer *locus standi* on the Union to bring a claim in its own name. According to Counsel, the Union can only appear as an Advocate on behalf of the aggrieved employee.
4. In response, Mr. Makuwa (Union Representative) submitted that under Article 41(2)(c) of the Constitution, workers are empowered to participate in the activities of a trade union of their choice. He added that the Claimant Union was under a responsibility to represent its members.
5. The question before the Court is whether a trade union can sue in its own name for the benefit of its members. In order to determine this question correctly, one must bear in mind the unique nature of the terms and conditions of employment of unionisable employees, which are often contained in a Collective Bargaining Agreement (CBA) signed by the employer and the union.
6. The rationale behind collective bargaining for unionisable employees is that this category of employees, unlike those in management, have no capacity to negotiate individual employment contracts. The union therefore negotiates with the employer collective terms and conditions of employment which are then reduced into a CBA.
7. In practice, the CBA binds all unionisable employees whether signed up or not. In this regard, unionisable employees who are not members of the union are charged agency fees because they all benefit from the terms and conditions contained in the CBA. For this reason, celebrated common law principles such as privity of contract, are not always applicable in employment contracts affecting unionisable employees.
8. Flowing from the foregoing, a union member who is aggrieved by the action of their employer is entitled to refer their dispute to the union for representation. In ***Kenya National Private Security Workers Union v Lavington Security Limited [2013] eKLR*** this Court held that the Labour Relations Act confers a special jurisdiction on trade unions to sue, in their names, on behalf of their members who are aggrieved by the action of their employer. This is the same power conferred under Section 22 of the Employment and Labour Relations Court Act.

9. It seems to me therefore that the Respondent's objection is premised on a misapprehension of the law and is therefore overruled. The costs thereof will be in the cause.

10. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 25TH DAY OF AUGUST 2017

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JUDGE

Appearance:

Mr. Makuwa (Union Representative) for the Claimant

Mr. Osundwa for the Respondent