



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 1098 OF 2017**

(Before Hon. Justice Hellen S. Wasilwa on 22<sup>nd</sup> November, 2017)

**KENYA SHIPPING CLEARING AND  
WAREHOUSES WORKERS UNION .....CLAIMANT**

**-VERSUS-**

**GLOBAL FREIGHT LOGISTICS LIMITED .....RESPONDENT**

**RULING**

1. The application in Court is one dated 15<sup>th</sup> June 2017 filed by the Claimant herein under Certificate of Urgency. The Application was filed through a Notice of Motion dated the same date and filed under Section 56(i), of the Labour Relations Act, Section 12 of Industrial Court Act and Employment and Labour Relations Court Rules and all enabling laws.

2. The Applicant seeks the following orders:

**1. That the Honourable Court be pleased to certify this Application as extremely urgent, services be dispensed with and it be heard Exparte in the first instance.**

**2. That the Honourable Court be pleased to direct and order the Respondent to allow the Applicant/Claimant Union to access the Respondent's premises to talk to the workers for organizing and recruiting them as members.**

**3. That there be temporary injunction restraining the Respondent from harassing, victimizing, intimidating and dismissing any workers until and after the hearing and determination of this suit.**

3. The application is supported by the annexed affidavit of James O. Tongi and further grounded on the following grounds:

***1. That the Applicant/claimant Union wrote two letters requesting the Respondent to accord the Applicant/Claimant access for the reasons of organizing and recruiting workers as members of the Applicant/claimant Union failed as the Respondent refused to allow nor reply the two letters to date.***

**2. The Respondent is on Clearing and Forwarding and Logistics sector which squarely fall the jurisdiction operational of the Applicant/claimant Union.**

**3. That worker to be organized and recruited is within the workers' right article 41 of Kenya Constitution and Labour Relations Act 2007 Section 4.**

4. The supporting affidavit reiterates the grounds above. When the application came up *ex parte* on 16<sup>th</sup> June 2017, the Court granted prayers No. 1 and 3 above.

5. The Respondents were accordingly served and the Respondents director one Arbi Alimohamed Mussani filed a Statement and a Replaying Affidavit deponed to on 24<sup>th</sup> July 2017.

6. The Respondent in their affidavit stated that they had been conducted by one Samson Ongera in May 2017 who wished to recruit members to their Union. That the Respondent informed him that he was free to do so provided it was outside the company's official working hours to avoid disruption of their activities. That also since their work premises are situated within the JKIA an area with special security concern, because of its sensitivity, he informed him that any meeting had to be properly conducted.

7. He then informed his employees of the Union requests and that he had no problem with any or all of them giving audience to the Union representatives.

8. That subsequently he was informed by his employees that they had no desire to join the Union and so saw no need to have any meetings with the Union officials. That the said employees have filed a Statement confirming the same.

9. I have examined the averments of both parties. The issues being raised by the Claimant Application concern labour rights including the right to form, join and participate in activities of a Union as envisaged under Article 41 of the Constitution. In this case an employer can never be the mouth piece of a Union and where a Union wishes to gain access to recruit members an employer can never be the one to talk to employees and ask them if they wish to join a Union.

10. In this respect the action of the Respondent going ahead to solicit a response from the employees on whether they wish to join a Union or not is in bad light and I disregard it entirely.

11. In view of the prayers sought, I allow the application in its entirety and direct that:

**a) The Respondent shall grant the Claimant access to its premises for purposes of recruitment of unionisable employees as members of the Union.**

**b) Before gaining access, the Union will give the employer Respondent at least 7 days notice and gain access during non-working times preferably during the breaks.**

**c) The recruitment will not disrupt the Respondent's normal working hours.**

**d) The Respondents are barred from intimidating, harassing, victimizing or dismissing any worker who may wish to participate in the activities of the Claimant.**

**e) Costs in the cause.**

Read in open Court this 22<sup>nd</sup> day of November, 2017.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

No appearance for Respondent

No appearance for Claimant