**THE REPUBLIC OF UGANDA**

**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**

 **LABOUR DISPUTE REFERENCE No. 010/2015**

**ARISING FROM MGLSD 252/2015.**

**UGANDA BUILDING AND CONSTRUCTION, CIVIL**

**ENGENEERING CEMENT AND ALLIED WORKERS UNION ……….. CLAIMANT**

**VERSUS**

 **CHINA COMMUICATIONS, CONSTRUCTION**

**COMPANY LTD …..………. RESPONDENT**

**BEFORE:**

1. **THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
2. **THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

**PANELISTS**

**1.MS. ROSE GIDONGO**

**2.MS. HARRIET MUGAMBWA NGANZI**

**3. MR. JACK RWOMUSHANA**

**AWARD**

**BRIEF FACTS**

According to the Joint scheduling memorandum, the Claimant is a registered Labour Union, according to her, its membership includes employees of the Respondent. The Labour Union was registered for the purposes of collective bargaining and the promotion and protection of the economic interests of its members, as enshrined under Article 40 of the Constitution of Uganda 1995, as Amended. It is the Claimant’s case that, the Respondent refused to recognize her as provided under section 24(2) of the Labour Unions Act 2006, and having not been resolved, by the Commissioner Labour, it was referred to this Court.

The Respondent, disputes the allegation that any of her employees in the project have currently or previously subscribed their membership to the Claimant. It’s her case that, she has always recognized the Claimant and it was not mandatory to execute a Recognition Agreement for that purpose. The Respondent denies knowledge of Labour Dispute No.252 of 2015, which the Claimant purports to was the basis for the Registrar’s reference to this Court.

**ISSUES:**

1. **Whether the Claim is properly before this Court?**
2. **Whether it is mandatory to execute a formal written agreement for the Recognition of a Labour Union between the employer and the Labour Union?**
3. **Whether the parties are entitled to the reliefs sought?**

**REPRESENTATION**

The Claimant was represented by Mr. Richard Mwebaze of Amanyiire & Mwebaze Advocates and the Respondent by Mr. Paul Ecochu of M/S GP Advocates.

**SUBMISSIONS**

**1.Whether the Claim is properly before the court?**

Counsel for the Claimant refuted the allegation that, the Claimant did not comply with section 24 of the Labour Unions Act 2006, because she reported her non-recognition by the Respondent, to the wrong officer, the Commissioner Labour, as opposed to the Director Labour. Counsel argued that Respondent was copied in on the letters to the Commissioner Labour, therefore she cannot claim ignorance about the matter. It was his submission that Commissioner Labour who was the Acting Director in 2013, advised the Claimant to engage with the new Management of the Respondent which was done, but in vain. According to Counsel the Commissioner declined to make an order for recognition and he referred the matter to this court instead. Therefore, the matter is properly before this court.

In reply, Counsel for the Respondent submitted that, the matter was not a labour dispute as defined under section 2 of the labour Disputes (Arbitration and Settlement) Act (LADASA) to mean *“… any dispute or difference between an employer or employers and an employee or employees, or dispute between employees or between labour unions , connected with the employment or non employment, terms of employment, the conditions of labour of any person or the economic and social interests of a worker or workers…”,* because the dispute is about the recognition of a trade union which is not in the purview of the definition of a labour dispute.

It was Counsel’s understanding that, the Industrial Court being a Court of reference, it receives references under section 84 of the Employment Act(we believe he meant section 94), as an Appeal from the decision of the Labour officer; under section 8 of the LADASA (supra) as a reference from the Labour officer and under section 24 of the Labour Unions Act (the Act) as a reference from the Registrar of Trade Unions (we believe he meant Registrar of Labour Unions).

Relying on, **Asiimwe Francis vs Tumwongyeirwe Aflod** – **Court of Appeal Misc Application No. 103/2011**, arising out of Civil, Appeal No. 45 of 2011, which discussed the effect of mandatory terms of a statute, Counsel argued that, the provisions of section 24(1) (d) and (2) are mandatory.

He insisted that, the Respondent has not refused to recognize the Claimant and there is evidence on the record to that effect. However he contended that, the Claimant had not presented any proof to show that, its members were employed by the Respondent, to warrant her recognition in accordance with Section 24(1) (d) of the Labour Unions Act. He contested the internally generated list of uncorroborated names of persons purported to be the respondent’s employees and insisted that it was incumbent upon the Claimant to corroborate the list. He further argued that, the letters which the Claimant relied on as evidence of its efforts to cause the Respondent to enter a recognition agreement with her, were written in relation to the Respondent’s Nyakahita Kazo project which ended in 2012 and not the instant case. He insisted that the Claimant did not follow the mandatory procedure as set out under section 24 of the Labour Unions Act because of the following reasons:

1. The Commissioner gave the Respondent’s short notice of 13 days as opposed to 21 days to appear for the meeting contrary to section 24(3).
2. The Commissioner did not request the Respondent to respond in writing.
3. The commissioner did not consider the matter and reach a determination as provided under section 24(5) and he did not issue any order to lead to a reference under Section 24(6).

It was Counsel’s submission that, a violation of these provisions was prejudicial to the Respondent who was not given an opportunity to be appraised of the matter and therefore, could not respond to it. In the circumstances, no reference could emanate from such a violation.

He further contended that, the Respondent was not aware of Labour Dispute 252/2015 from which this matter is purported to have arisen and there is no record of proceedings or an order from which such a reference could have arisen. Counsel insisted that Labour Dispute 252/2015 from which this reference is supposed to have arisen did not exist. According to him the Respondent was only aware of an invitation to meet with the Commissioner on 2/02/2012, but this letter cannot be taken to be the proceedings of a matter which was filed in 2015. He contended that a labour dispute as defined under the LADASA is referred to this Court by a labour officer but the instant case should have been referred to the Court by the Registrar of Labour Unions, in accordance with the Labour Unions Act 2006. Therefore, having been referred by the Labour officer it is improperly before this court .

**DECISION OF COURT**

Section 2 of the Labour Unions Act, 2006, defines **“Labour Union”** as *“… any organisation of employees created by employees for the purpose of representing the rights and interests of employees and includes a registered labour Union in existence at the commencement of this Act.*

It also defines **“Labour dispute”** to “*mean any dispute or difference between an employer or employers and employees or between employees and employees, connected with employment or non- employment, or the terms of the employment, or with the conditions of labour of any person or the economic and social interests of a workers or workers.”(our emphasis).*

Section 2 of the Labour Disputes (Arbitration and Settlement) Act 2006, defines a labour dispute to “*mean any dispute or difference between an employer or employers and employees or a dispute between employees; or between labour unions, connected with employment or non- employment, or the terms of the employment, the conditions of labour of any person or the economic and social interests of a workers or workers.”(our emphasis).*

 In our considered the definitions in both laws are literally not different. All the d3 definitions are connected with disputes arising out of or connected with the rights and interests of the employees in an employment relationship. What is distinguishable however, is that each law provides for a different forum through which an aggrieved person can bring a dispute arising under it. Whereas the LADASA under section 3 provides that labour disputes should be reported to the labour Officer or Commissioner labour (who is also a labour officer), disputes under the Labour Unions Act, which is an Act to regulate the establishment, registration and management of labour Unions and other related matters, provides that disputes arising under it are reported to the Registrar of labour Unions. Section 13(1) of the labour Unions Act provides that;

*“ The Minister shall by statutory Instrument appoint a Registrar of Labour Unions who shall be a senior public officer and who shall be responsible for the functions conferred upon the Registrar…”*

Section 24 (3)(4), (5) and (6) of the Labour Unions Act, specifically provide for the procedure to be followed where an employer refuses to deal with a registered labour Union and states as follows:

1. *Where an employer refuses to deal with a registered organization in accordance with subsection(1)(d), then the registered organization shall complain to the Registrar, who shall immediately call upon the employer to show cause in writing within twenty-one days, why the employer is not complying with this Act.*
2. *Where a registered organization refuses to deal with an employer in accordance with subsection(1)(d) the employer may petition* ***the Registrar****, who shall immediately call upon the registered organization to show cause in writing, why the registered organization is not complying with this Act.*
3. *Where the Registrar is not satisfied with the cause shown by the employer or registered organization in subsections (3) and (4), he or she shall, within twenty-one days, if he or she considers that the public interest so requires, make an order requiring an employer or a registered organization to recognize any registered organization or employer.*

Section 24(6) of the Labour Unions Act provides that;

1. *Where the employer or registered organization fails to comply with an order made under subsection (5), or where the Registrar declines to make the order, the aggrieved party may refer the matter to the Industrial court.*

Therefore, a dispute concerning the recognition of a registered labour union and particularly where an employer has refused to recognize a labour union, such a dispute shall be reported to the Registrar of labour Unions. The Registrar shall cause the employer to show cause in writing within 21 days, why the employer is not complying with the Act. Where the Registrar is not satisfied with the explanation given by the employer, he or she shall withing 21 days, either make an order requiring either party to recognize the other or decline to make such an order.

Where the Registrar’s order is not complied with or where the Registrar declines to make an order requiring compliance with the Act, the **aggrieved** party may refer the matter to the Industrial Court.

The reference is in this case is made by the aggrieved party and not the Registrar, or any other officer holding the responsibility of Registrar or labour officer. We believe that this is because the basis of the reference is non-compliance with the Registrar’s order in which case the Registrar would be rendered *functus officio*, or in cases where ethe Registrars refuses or fails to issue the order.

Although we found no evidence on the record indicting that the matter was reported to the Registrar of Labour Unions or any officer Acting or holding the position of Registrar, or that the Labour officer who referred it to this court complied with section 24(3,4,5 and 6) supra), Mr.Oloka Mesilamu’s letter to the project manager dated 18/03/2013,Marked “A” on the record, indicates that the Claimant notified Respondent about its intention to seek recognition. The Respondent replied to this letter through her lawyers GP Advocates, dated 14/05/2013, stating that she was always willing to negotiate with the Claimant but declined to enter a recognition agreement. The letter categorically stated that;

*“… We note that your Union is duly registered and recognition need not be done by agreement. However for purposes of transparency it would be important that you indicate your membership in respect to our client to enable focused and appropriate discussion.*

*In the meantime, if there any proposals for negotiation that you would like to make, our Client is ready to study the same …”*

This letter in our considered opinion, clearly shows that the Respondent recognises that she is bound to recognize and deal with the Claimant, but it not mandatory for her to enter into a formal written recognition agreement to do so.

The contention is therefore, not about the Respondent’s refusal to recognize or deal with the Claimant as provided under Section 24(1)(d), but **Whether it is mandatory for the Respondent to execute a formal written recognition agreement with the Claimant?**

Therefore, it is not fatal that the matter was referred to this court by the labour officer and not the Registrar because substantive justice as provided under Article 126 (2) (e) of the Constitution of Uganda 1995 as amended, should be administered without undue regard to technicalities. Article 126(2)(e) provides that:

*“…*

*(2) In adjudicating cases of both a civil and criminal nature courts shall, subject to the law, apply the following principles-*

*a) Substantive justice shall be administered without undue regard to technicalities.”*

In any case it was not disputed that the Commissioner Labour at the time was holding the responsibilities of the Director Labour. In the circumstances, this Court is not barred from handling the matter and it is therefore, properly before it. This issue is resolved in the affirmative.

**2.Whether it is mandatory to execute a formal written recognition agreement between the Employer and the Labour Union?**

It was the submission of Counsel for the Claimant that Section 24(1) (d) of the Labour Unions Act 2006 makes it mandatory to execute a formal written agreement between the employer and a labour Union. It was also his submission that the definition of a recognition agreement under Section 2 of the LADASA read together with section 24(1) (d) envisages a formal written recognition agreement and so does section 23 of the Labour Unions Act, which makes reference to a recognition agreement.

He also cited section 2 of the Labour Unions (check off) regulations Statutory Instrument No. 06 of 2011, which provides for check off to issue, after the conclusion of a recognition agreement between an employer and a Labour Union. He argued that, the check off regulations envisage a formal agreement to be in place before check off can issue, therefore, execution of a formal written recognition agreement is mandatory. He also made cited to Regulation 7 of the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012, which requires the attachment of a recognition and collective bargaining agreement between the employer and the labour union, where a dispute between an employer and a labour union is brought before the Industrial Court.

He contended that the Respondent had signed recognition agreements with Labour Unions in Kenya as shown by annexures A and B to Oloka Mesilamu’s supplementary witness statement, therefore she is estopped from claiming that, it is not mandatory to execute a formal recognition agreement. He insisted that, contrary to the submission by Counsel for the Respondent, the execution of a recognition agreement is mandatory. According to him, the copies of the recognition agreements from Kenya, which the Claimant attached are admissible in this court, given the provision of section 18 of the LADASA, which is to the effect that, the Court is not bound by strict rules of evidence. He also relied on **Platinum Mile Investments (PTY) Limited vs South African Transport and allied workers Union case No. JA28/08**, whose holding is to the effect that a recognition agreement was not a contract in the legal sense, but a piece of subordinate legislation.He prayed that court should find that a formal agreement is mandatory, therefore, the Respondent should be ordered to execute a recognition agreement with the Claimant in all its projects.

In reply Counsel for the Respondent argued that the requirement for a recognition agreement is invalidated by the Claimant’s failure to prove that she has members who are her employees, to necessitate the recognition.

Counsel insisted that Section 24(1) (d) of the Labour Unions Act 2006, does not make it mandatory for a written agreement to be executed for recognition of a Labour Union. He argued that the recognition envisaged under this subsection, can take any form provided the parties are able to bargain for the rights of the employees involved. In any case, the primary role of the Labour Union is for purposes of collective bargaining and not for the collection of “dues.”

He contended that, the Claimant’s argument that a formal agreement was mandatory for purposes of a labour Union, given Regulation 2 of the **Labour Unions (check off) Regulations Statutory Instrument No.60 of 2011,** (supra), would be to assume that the entire purpose of the Labour Union is merely to collect dues from its members and not to represent them. According to him, it is not in dispute that, the Claimant had non-employees as its members and they would not be covered by the recognition agreement yet it was considered very important.

He argued that the Check off regulations are not an enabler to section 24(1) (d) and a labour Union is deemed recognized when an employer agrees to negotiate with it on matters of pay and working conditions for the workers it represents. Counsel insisted that, there is evidence on the record indicating the Respondent was always willing to engage with the Claimant albeit once there was proof that, her employees are its members but this engagement did not have to be formal.

Citing **Uganda Electricity Alliance Workers Union Vs Uganda Electricity Transmission Company ( LDR o94/2015,** whose holding is to the effect that; whereas a recognition agreement recognized the Claimant as the sole representative of the unionized workers of the Respondent, it did not prevent its members from organizing outside the Union. Counsel argued that the provisions of section 24 therefore, lays emphasis on the aggregation of the workers’ rights as opposed to collection of dues.

It was further his submission that, where the employer agrees to negotiate with a Union this presupposes recognition. Therefore, the Union is estopped from claiming that, it has not been recognized merely because there is no formal recognition.

He also relied on section 10 of the contracts Act which provides for a contract to be either written or oral depending on the conduct of the parties. He stated that a contract is in writing where it is (a) in form of a data message; (b)accessible in a manner usable for subsequent reference and(c) otherwise in words… he insisted that the conduct of the Respondent in the instant case, indicated that, she was always willing and ready to engage with the Claimant, provided that, the claimant was a genuine representative of her workers. He argued that the Respondent made efforts to request for proposals for collective bargaining as provided under section 24, in vain.

According to counsel **Platinum Mile Investments (PTY) Limited vs South African Transport and allied workers Union case No. JA28/08,** which was cited by counsel for the Claimant, is distinguishable with the instant case, because, the agreements referred to in that case subordinate legislation which were promulgated by a an Industrial Council which transmits them to the Minister for gazetting and not by the parties and not recognition agreements as envisaged under the laws of Uganda. He contended that the recognition agreements under the laws of Uganda are considered as ordinary agreements which are enforced as such.

He further refuted the reference to the recognition agreements which the Respondent signed in Kenya because unlike in Uganda , it is a requirement to sign a written recognition agreement in Kenya. It was his submission that the evidence in this regard lacked cogency and there was no evidence to prove that the parties in Kenya were the Respondents in the instant case. He insisted that it was not mandatory to enter a formal recognition agreement under section 24 of the Labour Unions Act, therefore court should resolve this issue in the negative.

**DECISION OF COURT**

The right to freedom of association and the protection of the right to organise at the work place is provided for under the Article 2 of the **Freedom of Association and Protection of the right to Organise Convention no.87 of 1948,** which the Government of Uganda ratified on 2/06/2005. It states that;

*“Workers and employers without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.”*

Article 1 of the **Right to Organise and Collective Bargaining Convention 1949(No.98)**, which the Government of Uganda ratified on 4/06/1963, provides that:

*“1. Workers shall enjoy adequate protection against acts of anti- union discrimination in respect of their employment*

*2.Such protection shall apply more particularly in respect of acts calculated to-*

1. *Make employment of a worker subject to the condition that he shall not join a union or shall relinquish union membership;*
2. *… “*

These rights have been domesticated under Article 29(1) (e) of the Constitution of Uganda which provides that:

*“(1) Every person shall have a right to-*

*…*

*(e ) freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organisation.*

*…”*

 And the Labour Unions Act 2006, which provides for the establishment, registration and management of labour unions and other related matters for purposes of collective bargaining and other related matters..

It is also not in dispute that, the Claimant Labour Union, is registered for purposes of collective bargaining and representation. The Respondent in the instant case does not dispute that she is bound to recognize the Claimant for purposes of collective bargaining and other employment matters affecting her employees who are members of the Union. **What is in dispute is whether it is mandatory for recognition to be formal.**

The *Merriam Webster* dictionary defines ***“recognition”*** *as “…to acknowledge formally, acknowledgement of the existence, validity or legality of something,”*

Black’s law dictionary on line defines **“recognition”** to mean, “… *ratification, confirmation; acknowledgement, that something done by another person in one’s name had one’s authority…”*

Section 24(1) (d) of the Labour Unions Act, provides that:

1. *Every employer shall be bound(emphasis ours)to recognize, for purposes of collective bargaining and in relation to all matters affecting the relationship between the employer and his or her employees, any registered labour union to which any of his or her employees have previously subscribed their membership where the employees fall within the scope of membership of the labour union;*
2. *Every employer is bound, under subsection (1)(d) to recognize any registered organization, and the registered organization representing the employees in question shall bargain in good faith.*

The use of the words **“shall be bound”** in section 24(1) (d) and “**Bound”** subsection (2), literally means to secure or fasten, to create an attachment. According to the Collins dictionary of law defines **“bind”** is to impose legal obligations, to be placed under legal restraint, among others. The wording of section 24(1) (d) is mandatory and therefore, it is intended to create a legal obligation upon the employer which is enforceable by law. The scope of the obligation is be defined and the sanction for non-compliance spelt out. Section 24(1) (d) imposes on the employer a legal obligation to recognize a registered labour union for the specific purpose of collective bargaining and any other employment matters affecting his/her employees who subscribe to the labour Union. The recognition envisaged by the legislature in our considered opinion, is not limited to mere recognition of the existence of the Union, but it is recognition of the framework within which the collective bargaining and representation of the rights and interests of the worker will be undertaken. It is a recognition that, the registered labour Union is the medium through which the negotiations for the collective rights and interests of the employees who subscribe to it will be undertaken. In the circumstance the basic principles, rules and procedures to be used by the parties in carrying out collective bargaining and representation of these interests must be defined and hence the requirement for a formal written agreement.

We therefore have no doubt in our minds that, the recognition of the Labour Union, envisaged under section 24(1)(d) (supa)must be by execution of a formal written agreement which clearly sets down the principles, rule and procedures as the framework for collective bargaining and other matters affecting the employment relationship between the employer and his or her employees.

We do not subscribe to the assertion by the Respondent that, the Claimant is required to prove that, its members are her employees before it can recognize her because regulation 2 of the Labour Union(Check off) regulations (supra), provides that proof of membership is subsequent to executing a recognition agreement and a collective bargaining agreement. The Check Off Regulations provide that, each member must consent in writing to the check off system. Regulation 2 of the Labour Unions (check Off ) Regulations , 2011 provides that:

*“(1) Upon the conclusion of a recognition agreement between an employer and an affiliated labour Union, the employer shall make monthly deductions, from the salary or wages of every employee who is a member of that union, of a sum equal to the monthly subscription required to be paid by the employee as a member of the union.*

*(2)A deduction shall not be made from the salary or wages of an employee unless he or she had signified his or her consent inwriting…”*

Therefore, proof of membership is the presentation of the employee’s written consent to check off. It is therefore, not a requirement for the Claimant to provide a list of the employees who are members of the Union as a prerequisite for recognition by the employer as the Respondent would want Court to believe. In any case, a labour Union cannot be registered without providing the number of members (see section 15(2) (b) of the Labour Unions Act).

In the conclusion, it is our finding that Section 24(1)(d) makes it mandatory for an employer to enter into a written formal recognition agreement for purposes of collective bargaining and other employment related matters. **It is therefore, mandatory for the Respondent to execute a formal written agreement for recognition of the Claimant, for all her projects.** This issue is answered in the Affirmative.

**3.Whether the Claimant is entitled to reliefs sought?**

Counsel for the Claimant submitted that the Claimant was entitled to special damages, because the regulation 2 of the labour Unions (checkoff) Regulations(supra) cannot be effected before execution of both the recognition and collective bargaining agreement, because of the Respondent’s refusal to execute the formal agreement. Counsel argued that the Consent form annexed as Annexure “A” with a list of 441 names was evidence of the membership. He contended that the members were earning an average of Ugx. 140,000/- per month and they had agreed to pay 5.5% of their salary as subscription to the union which the claimant could not collect because of the absence of the Recognition Agreement. Therefore, the Claimant lost income for 84 months /7 years p to 2017 amounting to Ugx. 332,388,000/- and Ugx. 488,232,400/- plus interest from 2011-2021. He prayed that the said amounts are awarded as general damages.

He also prayed for Ugx. 200,000,000/- for the violation of the Claimants Constitutional right to collective bargaining as provided under Article 40 of the Constitution of Uganda as Amended.

In reply Counsel for the Respondent submitted that the Claimant was not entitled to damages and it did not plead for the same in the initial memorandum of claim which only prayed for an order for recognition and for costs. He contested the filing of the amendment to include a prayer for damages without leave of court.

He argued that the Labour Unions Act under section 24(7), provides that, the court can only issue 2 possible remedies as follows:

1. *The Industrial court, after hearing both parties in respect of subsection (6), may\_\_\_\_*
2. *Order that the registered organization and the employer shall deal in good faith, in respect of all matters concerning the relations of the employer and his or her employees who fall within the scope of the membership rule of the registered union; and*
3. *Determine, for such period as may be appropriate, the terms and conditions of the employees of the employer who fall within the scope of the membership rule of that registered organization.*

Therefore, it is not within the mandate of the Industrial Court to award damages in a matter brought under Section 24. Relying on **Shell (U) Ltd Vs Achilis Mukiibi CA No 69/2004, he** argued that it is a settled matter that special damages must be pleaded and proved by evidence. He argued that the Claimant has failed to prove the special damages and merely mentioned figures without providing pay slips as evidence of indicative incomes of each employee, neither did he attach the Union’s Constitution as evidence. He also did not show the loss occasioned or inconvenience caused to the Claimant to warrant the award of general damages

Counsel contended that the Claimant has not demonstrated the loss that was occasioned because it did not substantiate its membership, the accurate amount being paid by each and its entitlement to that income, therefore the claim should be dismissed with costs.

**DECISION OF COURT**

We do not subscribe to the submission by counsel for the Respondent that this Court is only limited to grand only 2 possible remedies as prescribed under section24(7) of the Labour Unions Act. With due respect to counsel this Court has discretion to award damages and any other reliefs it deems fit in addition to statutory remedies in any dispute referred to it.

On 4/10/2017 Mr. Mwebaze Richard for the Claimant orally applied to amend paragraph of the initial memorandum of claim and Mr. Ecochu Paulo for the Respondent who was in court, stated that he had no objections as long as he was also allowed to amend the Respondent’s pleadings. Court granted leave to the Claimant to amend her pleadings and gave timelines within which both parties should file the necessary amendments to their respective pleadings. Therefore, the Respondent’s objection on this issue is unfounded.

1. **Special damages**

Indeed the recognition of the Labour union is the basis upon which it can engage with an employer for purposes of collective bargaining and all matters affecting the relationship between his employers and his or her employees. As already stated above, the recognition agreement sets out the principles, rules and procedures upon which the collective bargaining and representation of the workers’ rights and interests will be undertaken. Therefore, a labour Union cannot claim entitlement to income arising out of a check off system before the execution of the Recognition Agreement. The wording of Regulation 2(1) of the **Labour Unions (check off) Regulations Statutory Instrument No. 60 of 2011,** clearly provides that:

*“(1) Upon the conclusion of a recognition agreement between an employer and an affiliated labour Union, the employer shall make monthly deductions, from the salary or wages of every employee who is a member of that union, of a sum equal to the monthly subscription required to be paid by the employee as a member of the union.*

Regulation 2(2) provides that;

*(2)A deduction shall not be made from the salary or wages of an employee unless he or she had signified his or her consent in writing…”*

Our interpretation of sub regulation 2 is that, each employee must signify his or her consent to have monthly deduction of a percentage of his or her salary or wages as subscription as a member of the Union in writing. As rightly stated by Counsel for the Respondent if its members earned an average salary of Ugx. 140,000/- per month this is an aggregation of the entire salaries and is not representative of individual earnings given that they do not earn the same salary. In any case the Regulation 2(4) of the Regulations provides that, the employer who deducts money under these Regulations shall give a pay slip to every employee from whose salary or wages the deductions are made. Therefore, the pay slip is additional evidence of subscription to a Labour Union.

We therefore have no doubt in our minds that, given that each of the employees earns a specific salary and the salaries are not the same and given that it is a requirement that the employer must give each one a pay slip after the deduction is made, and the employee is expected to furnish the employer with his or her individual written consent( which would in our view, indicate the name of the employee, the position held, salary earned and amount to be deducted per month, his or her signature and the signature of the Respondent) and the only requirement for collective submission by the employer is the total sum of money checked off, from the salaries or wages of the employees by way of check off system, it was not sufficient for the Claimant had to furnish court with the 441 names without the attendant attachments.

In the circumstances, the general list of 441 names whom the Claimant submitted as evidence of members who had subscribed to the check off system is not sufficient evidence of membership in the absence of the individual written consents to check off system, clearly indicating, the name of the employee, the position held by each of them, how much each earned and how much he or she consented to be deducted from his or her salary every month as subscription per month.

In any case the check off system had not yet taken effect given that the Claimant and the Respondent had not yet executed a formal written recognition Agreement. The Claimant had no basis to engage workers to consent to the check off system, therefore, there was no basis for the Respondent to make any deductions from the employees for remission to the Respondent as claimed.

We, therefore have no reason to disagree with the submission by Counsel for the Respondent that, the list of persons which the Claimant attached as its membership is not sufficient without their attendant written consents, to the check off system. In the circumstances, the claim for special damages in form of lost of income from a would be check off in the sums of **Ugx.** **332,388,000/-** and **Ugx. 488,232,400/-** plus interest cannot stand. It is denied.

**General Damages**

Indeed, general damages are compensatory in nature and they are intended to return the aggrieved party to the position he or she was before the wrong committed against him or her. The Court has the discretion to determine the quantum of general damages to be awarded, based on the merits of each individual case.

It was not disputed that the Claimant notified the Respondent about its intention to seek recognition in March 2013. We have already established that whereas she expressed willingness to recognize and deal with the Claimant for purposes of collective bargaining, she refused to execute a formal Recognition Agreement with the Claimant which, we have held is mandatory. The Claimant was therefore not able to execute a check off system as provided under the check off Regulations (supra). We are convinced that the conduct of the Respondent stifled the Claimants right to represent the rights and interests of the employees who were entitled to subscribe to her membership, therefore she is entitled to compensation. We think an award of **Ugx. 25,000,000/**- is sufficient as general damages.

In Conclusion this claim succeeds in the following terms:

1. **The Claim was properly before this court.**
2. **A declaration that it is mandatory for an employer to execute a formal written Recognition Agreement with a registered Labour Union.**
3. **An order that the Respondent should execute a formal written Recognition Agreement with the Claimant for all its projects.**
4. **An award of Ugx. 25,000,000/- as general damages for preventing the Claimant from representing the rights and interest of the Respondents employees, when the Respondent refused to enter formal Recognition Agreement with the Claimant.**
5. **Interest of 12% per annum on all pecuniary awards from date of this award until payment in full.**
6. **No order as to costs is made.**

Dated and signed by:

**1.THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE …………….**

**2.THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA …………….**

**PANELISTS**

**1.MS. ROSE GIDONGO ……………**

**2.MS. HARRIET MUGAMBWA NGANZI …………..**

**3. MR. JACK RWOMUSHANA …………..**

**DATE: 16TH APRIL 2021**