



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISCELLANEOUS CIVIL APPLICATION NO. 840 OF 2007

**IN THE MATTER OF AN APPLICATION BY HOBRA MANUFACTURERS LIMITED FOR
LEAVE TO APPLY FOR AN ORDER OF CERTIORARI**

AND

**IN THE MATTER OF THE TRADE DISPUTES ACT, CHAPTER 234 OF THE LAWS OF
KENYA**

AND

IN THE MATTER OF INDUSTRIAL COURT CAUSE NO. 9 OF 2007

BETWEEN

KENYA ENGINEERING WORKERS UNION

AND

HOBRA MANUFACTURERS LIMITED

AND

**IN THE MATTER OF THE DECISION BY THE INDUSTRIAL COURT MADE ON 31ST MAY
2007**

AND

IN THE MATTER OF SECTION 47 OF THE TRADE DISPUTES ACT, CHAPTER 234

REPUBLIC.....APPLICANT

VERSUS

THE INDUSTRIAL COURTRESPONDENT

EX-PARTE

HOBRA MANUFACTURERS LIMITED

JUDGEMENT

This cause is a direct result of the ruling delivered on 31st May, 2007 by Judge Stewart M Madzayo in cause No. 9 of 2007 at the Industrial Court of Kenya at Kisumu. The dispute therein involved Hobra Manufacturers Ltd and Kenya Engineering Workers Union (KEWU). In the said ruling Judge Madzayo concluded that eleven employees of Hobra Manufacturers Ltd had not legally withdrawn from KEWU by addressing a letter of resignation to KEWU instead of addressing it to their employer. Judge Madzayo was interpreting the provision of Section 47 (1)(b) of the Trade Disputes Act, Cap 234 which states that:-

47(1) Every employer

(b) Where an employee notifies the employer in writing that he is not a member of the trade union concerned, no deduction or payment shall be made in respect of wages earned by that employee in any month following the month in which such notice was given, unless or until such notification is withdrawn.”

Hobra Manufacturers Ltd being dissatisfied with the said decision moved to this court and obtained leave to institute judicial review proceedings. By way of a notice of motion dated 14th August, 2007 and filed in court on the same date Hobra Manufacturers Ltd (the ex-parte applicant) seeks orders against Industrial Court (the respondent) as follows:-

1. That this Honourable Court be pleased to issue an order of certiorari to bring to the High Court and quash the decision of the Industrial Court made on 31st May, 2007.

2. That the costs of this application be provided for.

It is the ex-parte applicant's case that the respondent acted in excess of its jurisdiction by failing to find that the notice issued to the Union by the ex-parte applicant's employees amounted to a valid notice within the meaning of Section 47 of the Trade Disputes Act.

The respondent by way of grounds of opposition dated 12th February, 2010 opposed the application on the grounds that Judge Madzayo correctly interpreted Section 47 of the Trade Disputes Act.

Looking at the submissions placed before the court, I am of the view that only one issue seeks my determination. The issue is whether the respondent acted ultra vires in interpreting Section 47 of the Trade Disputes Act.

The scope of judicial review was clearly articulated at page 194 in MEIXNER & ANOTHER VS. ATTORNEY GENERAL (2005) 2KLR 189 by the Court of Appeal in the following words:-

“.....judicial review is concerned with the decision making process and not with the merits of the decision itself. Judicial review deals with the legality of decisions of bodies or persons whose decisions are susceptible to judicial review. A decision can be upset through *Certiorari* on a matter of law if on the face of it, it is made without jurisdiction or in consequence of an error of law.”

Going by the Court of Appeal decision, it is clear that the applicant needed to prove that the respondent had no jurisdiction or acted outside the law. It is not the business of this court to descend into the trial arena and direct the respondent on how to go about reaching its decision. It is immaterial that the decision reached by the respondent is wrong in the eyes of this court. The important thing is whether the respondent acted within its jurisdiction.

The ex-parte applicant avers that the respondent acted outside the law in its interpretation of Section 47 of the Trade Disputes Act. There is no dispute that an issue touching on the interpretation of the said Section had been canvassed before the respondent. The respondent had a duty to make a decision on that issue. Was the decision of the respondent wrong or right? I believe that this is not the right forum to make such a decision. As already stated, judicial review is not about the merits of the decision of a tribunal or inferior court. Whether the respondent was right in the interpretation is a question to be answered by an

appellate court. What is clear is that the respondent was obliged to make the said decision. There is nothing in that decision to show that the respondent's interpretation of the said law was outrightly contrary to the law. In the circumstances of this case the ex-parte applicant's application should fail. The same is therefore dismissed with costs to the respondent.

Dated and signed at Nairobi this 26Th day of January, 2012

W.K. KORIR
JUDGE