



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**CIVIL SUIT NO. 108 OF 2009**

**ISAAC K. BIRGEN & 107**

**OTHERS .....PLAINTIFFS**

**VERSUS**

**THE UNIVERSITY NON – TEACHING STAFF UNION & 7 OTHERS (Sued as Chapter Officers  
of the Moi University Branch of the 1<sup>st</sup>  
Defendant) .....DEFENDANTS**

**RULING**

Paragraphs 14, 15 and 16 of the plaint filed on the 19<sup>th</sup> June 2009 sets out the plaintiff's claim against the defendants.

**Paragraph 14** is a claim for a permanent injunction restraining the defendant whether by themselves their agents, representatives or assigns from negotiating with, proposing to or offering to negotiate matters concerning rates of pay, overtime, hours of work, method of salary payment, paid leave, medical benefits, principles of promotion, staff training and development, staff discipline, terms of employment and all other negotiable conditions of employment for all Senior Library and Administrative Staff of Moi University.

**Paragraph 15** is a claim for a declaration that the plaintiffs are not members of the first defendant and therefore the Union lacks mandate to negotiate with the with the Moi University Council any and all negotiable matters and conditions of employment for Senior Library and Administrative Staff at Moi University under the Labour Relations Act, 2007.

**Paragraph 16** is a claim for a declaration that the conditions and terms of employment for Senior Library and Administrative Staff of Moi University (i.e. the plaintiffs) are exclusively governed by the Moi University Act (Cap 201A), the statutes promulgated thereunder and the terms of service for Academic, Senior Library and Administrative Grades drawn by the University Council and under which the plaintiffs were employed.

It is contended by the plaintiffs that whereas the first defendant is a recognized trade union by Moi University through its Moi University branch as a properly constituted and representative body/organization representing the interest of all its members who are in employment of the said University, they (Plaintiffs) are not and have never been members of the first defendant and/or its Moi University Branch. Further, Moi University under its statutes has three cadres of staff to wit, Academic, Senior Library and Administrative Staff, middle level staff and junior staff. The membership of the first defendant is drawn exclusively from the middle level staff. The first defendant is therefore ill-equipped to negotiate terms of employment for the plaintiffs who all fall under the first cadre stated hereinabove. In a joint statement of defence filed herein on 20<sup>th</sup> July 2009, it is admitted that the defendants engaged in negotiations with the Moi University on terms and conditions of employment for its paid up members who fall under within grades 5 to 14 of which the plaintiffs fall and though eligible members are not actually members of the first defendant and would not suffer any loss and damage if the proposals and offers made in the negotiations are concluded. It is also admitted that there are three cadres of staff at the Moi University. However, the defendants deny that membership of the first defendant is exclusively drawn from the middle level staff only.

From all the foregoing, it emerges that the dispute at hand revolves around the membership of a trade Union (first defendant) and the capability of the first defendant to enter into negotiations with Moi University on behalf of the plaintiffs who are deemed to be members of the first defendant by virtue of their employment with the said Moi University. It is alleged that the first defendant and indeed all the defendants are engaged or intend to engage in negotiations with the Moi University in reference to terms and conditions respecting certain cadres of the University employees.

All the plaintiffs as well as the second to eight defendants are employees of the Moi University which recognizes the first defendant as a trade union. The plaintiffs contend that being non-members of the first defendant, the first defendant is not mandated to negotiate on their behalf with the University since their terms and conditions of employment are governed by the Moi University Act, (Cap 210A Laws of Kenya) and all the statutes made thereunder as well as the terms of service for Academic Senior Library and Administrative grades.

Moi University is not a party to the suit and whether or not it ought to be made a party may not be apparent at this juncture. In essence therefore, the dispute generally involves specified employees of the University and their recognized trade union and in the opinion of this court such dispute would not fall under the purview of the **Labour Institutions Act No. 12 of 2007** and/or the **Labour Relations Act No. 4 of 2007** for it to be referred to the Industrial Court which is created under Section 11 of the Labour Institutions Act which is an Act of parliament to establish labour institutions, to provide for their provisions, powers and duties and to provide for other matters connected thereto. Section 12 (1) of the same Act sets out the jurisdiction of the Industrial Court thus;

***“The Industrial Court shall have exclusive jurisdiction to hear, determine and grant any appropriate relief in respect of an application, claim or complaint or infringement of any of the provisions of this Act or any other legislation which extends jurisdiction to the Industrial Court, or in respect of any matter which may arise at Common Law between any employer and employee or employer’s organization and a trade union, or between a trade union, employer’s organization, a federation and a member thereof.”***

Under the Labour Relationships Act No. 14 of 2007, a trade dispute means a dispute or difference, or an apprehended dispute or difference, between employees and employees, between employers and trade unions or between employer’s organization and employees or trade union concerning any employment matter, and include disputes regarding the dismissal, suspension or redundancy of employees, allocation of work or the recognition of a trade union. This definition in a strict sense excludes the present dispute from being a trade dispute for it to be referred to the Industrial Court in terms of section 73(1) of the said

Labour relations Act No. 14 of 2004.

The plaintiffs membership of the first defendant through its Moi University Chapter is contested. Membership of a trade union is expected to be voluntary and unless an employee is a member of such a union, any dispute arising between the two does not necessarily have to be referred to the Industrial Court. The plaintiffs' denial of the first defendant's membership is a fact which has to be proved or disproved at the trial of the suit and would not form a basis for a preliminary objection.

Consequently, the present preliminary objection by the defendants is not deserved. The same is therefore dismissed with costs to the plaintiffs. The application by the plaintiff's dated 19<sup>th</sup> June, 2009 may be fixed for hearing inter parties on 26/7/2009. Interim orders extended accordingly.

**J. R. KARANJA**

**JUDGE**

**(Read and signed this 12<sup>th</sup> day of April, 2011 in the presence of Mr. Mitei, Mr. Yego holding brief for Omondi).**