



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**CIVIL CASE NO. 71 OF 2002**

**FANIKIWA LIMITED ..... PLAINTIFF**

**VERSUS**

**THOMAS KIPKEMBOI ..... DEFENDANT**

**RULING**

The repealed **TRADE DISPUTES ACT (CAP. 234 LAWS OF KENYA)** provided that a Trade Dispute means:-

**“A dispute or difference between employers and employees, or between employees and employees, or between employers and trade unions, or between trade unions and trade unions, connected with the employment or non-employment, or with the terms of employment, or with the conditions of labour, of any person and includes disputes regarding the dismissal or suspension of employees, the redundancy of employees, allocation of work or recognition agreements, and also includes an apprehended trade dispute.”**

Currently, labour relations and disputes are governed by the **LABOUR RELATIONS ACT NO. 14 OF 2007** which defines a trade dispute as follows:-

**“A dispute or difference or an apprehended dispute or difference, between employers and employees, between employers and trade unions or between an employers’ organization and employees or trade unions, concerning any, employment matter, and includes disputes regarding the dismissal, suspension or redundancy of employees allocation of work or the recognition of a trade union.”**

This present preliminary objection by the defendant is premised on this Court’s jurisdiction to deal with this suit. It is the applicant’s contention that the suit falls under the realm of the Industrial Court in as much as it involves a trade dispute between the plaintiff and the defendant who is described as the Branch Secretary of the Kenya Plantation and Agricultural Workers Union.

**MR. LIMO**, learned Counsel, submitted on behalf of the defendant that the description of the defendant in the plaint and the averment contained in paragraph five (5) of the plaint indicate that this suit was based on a trade dispute under the repealed Trade Disputes Act.

Responding to the objection, learned Counsel, **MR. CHEMITEI**, submitted on behalf of the

Plaintiff that there is herein no collective Bargaining Agreement (CBA) to show that the dispute is a trade dispute suitable for reference to the Industrial Court.

Learned Counsel contended that the defendant was a trespasser into the plaintiff's premises and as such, the issue is trespass and not a trade dispute. Further, reference of the matter to the labour office is a matter of fact which should await the trial of the suit.

All considered, the Court has to revert to the pleadings filed herein by both sides in order for it to rule whether or not the dispute herein is a trade dispute in terms of the repealed Trade Dispute Act.

In indeed this is a trade dispute then the jurisdiction to try it would lie with the Industrial Court. The authorities cited herein by the defendant provide useful insights on that point.

In that regard, paragraph 3 and 4 of the plaint dated 17<sup>th</sup> April 2002 provide for the actual course of action which led to the institution of this suit by the plaintiff.

In paragraph 3, it is alleged that on diverse dates the defendant chose to incite some individuals whom he claimed were former employees of the plaintiff whereby they threatened to destroy and/or harm the plaintiff's property.

In paragraph 4, it is alleged that without any color of right the defendant threatened to trespass onto the plaintiff's property with a view to inciting its employees or to carry out acts threatening the peaceful existence of the plaintiff's property including agricultural produce, equipments and livestock spread on the plaintiff's various farms.

Paragraph 5 which is relied upon by the defendant merely shows the efforts made by the plaintiff and District Labour Officers to amicably settle whatever dispute the defendant had with the plaintiff.

The paragraph shows that the defendant disregarded the efforts and continued with his unnecessary confrontation.

It is apparent from the foregoing paragraphs of the plaint that the intention of the plaintiff in this action was to move against the defendant in his personal capacity so as to restrain him from continuing with his unlawful action of trespassing into the plaintiff's premises and inciting its employees as well as threatening the peaceful existence of the plaintiff's property. Whether in fact that was so, is a matter to be determined at the trial of the suit.

Coupled with the aforementioned paragraph three (3) and four (4) of the plaint, the main prayer sought against the defendant i.e. a permanent injunction, clearly shows that the claim herein is not a trade dispute in terms of the repealed Trade Disputes Act or even the current Labour Relations Act No. 14 of 2007. It is a claim based on a tortuous conduct attributed to the defendant personally and not his trade union.

For all the foregoing reasons, the preliminary objection is unsustainable and must be and is hereby dismissed with costs to the plaintiff.

The parties should now endeavour to set down this suit for hearing and final determination. It is sad to note that the suit has been within the Court corridors for the last nine (9) years or so.

**J. R. KARANJA**  
**JUDGE**

**[Read and signed this 30<sup>th</sup> day of June 2011]**

**[In the presence of Mr. Mitey for Chemitei for respondent and M/s. Kipseii for Mr. Limo for applicant]**

