

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 942 of 2006

KENYA UNION OF COMMERCIAL FOOD & ALLIED WORKERS.....PLAINTIFFS

VERSUS

BIRKING INDUSTRIAL SERVICES (BIS) LTD.....DEFENDANT

RULING

The Applicant, Kenya Union of Commercial Food & Allied Workers were awarded Kshs.22,514,956.10 by the Industrial Court of Kenya

use No.118 of 1999 and Cause No. 59 of 2000. In order to enforce the award they filed a Notice of Motion under the provisions of Order XXXV Rule 2 & 3 of the Civil Procedure Rules. When the matter came up for hearing, Mr. Thuo counsel for the Respondents raised a Preliminary Objection on the ground that the application is based on a defective suit in that the suit involves 102 claimants and the suit should have come to court under Order 1 Rule 8(2) of the Civil Procedure Rules which provides:-

“1: 8(2)” The court shall direct the plaintiff to give Notice of Institution of the suit to all persons either by personal service or by public advertisement as the court in case may direct.”

The Preliminary Objection is opposed by Mr. Aswani. With due respect to counsel for the Respondent - this is not a fresh suit.

The dispute was heard and concluded by the judge of the Industrial Court and what comes to the High Court is an application for the enforcement of the Industrial Court Award.

The application for the Enforcement of the Industrial Court Award is brought by way of Notice of Motion under the provisions of Section 3A of the Civil Procedure Act Order XLV Rule 17 of the Civil Procedure Rules and Section 15(2) and Section 17 of the Trade Disputes Act Cap 234.

Section 15(2) of the Trade Disputes Act provides:

“15 (2) Without prejudice to any other remedy, any compensation awarded under this Section may be recovered summarily as a civil debt.”

Section 17 of the Trade Disputes Act provides:-

“17 (2)” The award or decision of the Industrial Court shall be final.

(2) The award, decision or proceedings of the Industrial Court shall not be questioned or reviewed, and shall not be restrained or removed by prohibition injunction, certiorari or otherwise, either at the instant of the Government or otherwise.”

Order XLV Rule 17 of the Civil procedure Rules provides:-

“XLV – 17” The court shall on request enter judgment according to the award.”

The application for the enforcement of an Industrial Award shall be made by way of Notice of Motion through a Miscellaneous Application.

For the reasons stated above the Respondent's Preliminary Objection is dismissed. Consequently the Claimants/Applicant's application is allowed in terms of Prayers (i), (ii) and (iii) of the Notice of Motion dated 5th September 2006.

Dated and delivered at Nairobi this 30th day of May 2007.

J.L.A. OSIEMO

JUDGE