



**Badula & 2 others (Suing as officials of Knut Tana River Burial Scheme) v Nguuwe & 2 others
(Civil Appeal E029 of 2023) [2024] KEHC 10775 (KLR) (16 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 10775 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARSEN
CIVIL APPEAL E029 OF 2023
SM GITHINJI, J
SEPTEMBER 16, 2024**

BETWEEN

**MOHAMED HIRIBAE BADULA 1ST APPELLANT
DIZON ASAHELNMPEMBE 2ND APPELLANT
MICHAEL BABWOYA BAHOLA 3RD APPELLANT
SUING AS OFFICIALS OF KNUT TANA RIVER BURIAL SCHEME**

AND

**IGWO SIMON NGUIWE 1ST RESPONDENT
MAURICE MARO ADE 2ND RESPONDENT
KENYA COMMERCIAL BANK LTD 3RD RESPONDENT**

(Being an Appeal from Ruling and Order of Hon E.K.To – Senior Principal Magistrate delivered on 5th September, 2023 at Hola in SPMCC No.E043 of 2022)

JUDGMENT

1. This appeal arises from the ruling and order of the Hon. E.K Too delivered on 5th September 2023 upholding the preliminary objection with costs to the defendants and urged the plaintiff to withdraw the matter and appropriately file the dispute before the court with jurisdiction failure to which the same will accordingly stand struck out after the expiry of 30 days.
2. The appeal is raised on the following grounds;
 1. That the learned magistrate erred in law and fact in finding that the phrase KNUT Tana River Burial & Benevolent Scheme is synonymous with and or stands for the name Kenya National Union of Teachers Tana River Burial & Benevolent Scheme.



2. The learned magistrate erred in law and in fact in finding that all introductory documents of the Burial and Benevolent Scheme emanate from KNUT, the teachers trade union.
 3. The learned magistrate erred in law and in fact in finding that the Knut Tana River Burial and Benevolent Scheme dispute in the suit is a trade dispute between members of KNUT and the teachers' trade union.
 4. The learned magistrate erred in law and fact in holding that the Knut Tana River Burial and Benevolent Scheme dispute in the suit falls under the industrial court.
 5. That the learned magistrate erred in law and fact in holding that the dispute in the suit falls within the ambit of Section 34 (i) and (iv) of the *Labour Relations Act* 2011 and that pursuant to Section 12 of the *Employment Act* the dispute falls within the jurisdiction of that court.
 6. The learned magistrate erred in law and fact in upholding the 1st and 2nd Respondents preliminary objection dated 14th February 2023 that the court lacked jurisdiction to entertain the dispute in the suit.
2. The brief facts of the case are that vide a plaint dated 2nd August 2022, the plaintiff moved the trial court seeking the following orders;
- a. A declaration that the 1st and 2nd Defendants have legally ceased to be signatories to the Knut Tana River Burial & Benevolence Scheme's Bank Account No. 1250748771 at the Kenya Commercial Bank, Hola, Branch.
 - b. An order directed to the 3rd Defendant to effect the change in signatories to the said Knut Tana River Burial & Benevolent Scheme Bank Account No. 1250748771 at the Kenya Commercial Bank, Hola Branch without requiring the 1st and 2nd Defendants to sign the bank account amendment forms or any such change of mandate forms to allow the plaintiffs to operate the Bank account as resolved by the members until the Plaintiffs are replaced by members of the organization as the signatories to the said bank account.
 - c. Costs of this suit and interest thereon at court rates.
 - d. Any other relief that this honourable court shall deem fit to grant.
3. In response to the Plaint, the 1st and 2nd Defendants filed statements of defence and a Preliminary objection which was raised on the following grounds; -
1. The Kenya National Union of Teachers Burial and Benevolent Scheme is a Trade Union or a creature of Trade union and any dispute arising therefrom is a trade union dispute.
 2. The suit before the court falls within the jurisdiction of the Employment and Labour Relations Court in terms of Section 12 (1) of the Environment & Land Court Act 2012.
 3. This honourable court lacks jurisdiction to hear and determine the suit as it pits officials of a trade union against members of the said trade union.
4. Upon consideration of the Preliminary Objection, the trial court's finding was that it did not have the jurisdiction to hear and determine the matter as the same is a dispute that falls under industrial court.

Disposition

5. The Appeal was canvassed by way of written submissions. I have taken into account the submissions by parties as well as the authorities relied upon. The sole issue for determine is whether the trial court erred



in upholding the Preliminary Objection. The parameters of consideration of a preliminary objection are well settled. A preliminary objection must only raise issues of law. The principles that the Court is enjoined to apply in determining the merits or otherwise of the Preliminary Objection were set out by the Court of Appeal in the case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696. At page 700 Law JA stated:

“ A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the Jurisdiction of the Court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

6. At page 701 Sir Charles Newbold, P added:

“ A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of Judicial discretion...”

7. The P.O as raised in the trial court was in regard to jurisdiction of the court. The Defendants argued that the dispute raised by the Plaintiffs was an Industrial dispute which falls under the Employment and Labour relations Court.

8. I have perused the trial record. In the judgment, the learned magistrate observed that the Plaintiff raised the issue of the use of the acronym KNUT to connote Kit for needy unitary teachers and not affiliated to KNUT and dispute that the grouping is creature of a Trade Union. Further, he observed that upon perusal of the documents filed, most of the letter heads emanate from the KNUT Tana River Branch. I have perused the referenced documents and specifically the minutes dated 14th July 2017. I have noted that the same were in respect of revival of the BBF fund. The said minutes are prepared in the letterhead of KNUT Tana River branch. I do not see how then the plaintiffs would want to distance themselves from KNUT Tana River Branch. I do agree with the trial magistrate that the dispute falls squarely under the ambit of the Employment and Labour Relations Court. As a result, the appeal herein fails for want of merit and the same is hereby dismissed with no orders as to cost.

JUDGMENT READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 16TH DAY OF SEPTEMBER, 2024.

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S.M. GITHINJI

JUDGE

In the absence of; -

1. Mr Mwarandu for the Appellant
2. Ms Osewe for the 3rd Respondent
3. Mr Atyang for 1st and 2nd Respondent

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S.M. GITHINJI

JUDGE



16/9/2024

