



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. E103 OF 2020

UNIVERSITIES ACADEMIC STAFF UNION.....PLAINTIFF

VERSUS

REGISTERED TRUSTEES OF MULTIMEDIA

UNIVERSITY COLLEGE PENSION SCHEME.....1ST DEFENDANT

JUBILEE INSURANCE COMPANY.....2ND DEFENDANT

THE KENYA ALLIANCE INSURANCE COMPANY..... 3RD DEFENDANT

AND

RETIREMENT BENEFITS AUTHORITYINTERESTED PARTY

RULING

- 1) The 1st and 3rd defendants each filed a notice of preliminary objection (dated 17th September 2020 and 18th September 2020 respectively). The gist of the preliminary objection are two fold: **First** is to the effect that this court lacks jurisdiction to entertain the plaintiff’s suit and motion dated 7/9/2020. **Secondly**, that the plaintiff has no locus standi to file this suit and the application on behalf of the members of Multimedia.
- 2) When the preliminary objections came up for hearing, this court gave directions to have the same disposed of by written submissions. I have considered the material placed before this court plus the rival written submission.
- 3) On the first issue, it is the submission of the 1st and 3rd defendants that this court lacks jurisdiction to entertain the plaintiff’s suit and the application because the plaintiff has failed to exhaust the statutory dispute resolution mechanisms provided for under Sections 46 and 48 of the Retirement Benefits Authority Act no. 3 of 1997.
- 4) It is stated that the dispute should have first been referred to the Chief Executive Officer of the Retirement Benefits Authority and the Appeals Tribunal. The defendants further argued that the plaintiff has failed to demonstrate why it failed to exhaust the aforesaid dispute resolution mechanisms before approaching this court, therefore this suit is prematurely before this court.
- 5) In response to the above submission the plaintiff urged this court to reject the same. The plaintiff stated that whereas there is a dispute resolution mechanism provided for under Sections 46 and 48 of the Retirement Benefits Authority Act no. 3 of 1997, the first mode of resolution of the dispute at hand is through Arbitration.
- 6) With respect, I am persuaded by the plaintiff’s submission that the first port of call in this dispute is the one stated in the Rules and Regulations of the Trust Deed.
- 7) Article 38 of the Multimedia University College Pension Schemes Trust Deed provides as follows:

“Disputes arising among or between the founder, trustee, members or other persons having a valid interest in the scheme are to be referred for arbitration by a single arbitrator to be appointed by the chairman for the time being of Kenya Branch of the Chartered Institute of Arbitrators of the United Kingdom the results of which shall be final and binding upon all parties and the proceedings shall be regulated by the provisions of the Arbitration Act no. 4 of 1995.”

8) In the plaintiff's application, a dispute has been declared to have arisen and that the plaintiff has approached this court for interim measures of protection during the arbitral process under Section 7 of the Arbitration Act.

9) In the end, I find that the plaintiff has properly approached this court, hence the preliminary objections lack merit.

10) The second ground of objection is to the effect that the plaintiff lacks the requisite locus standi to institute the present proceedings. It is argued that the plaintiff is a stranger under Section 46 of the Retirement Benefits Act, 1997 and therefore it has no locus standi to institute this suit on its behalf or on behalf of others. It is argued that it is only the members who can institute an action and not the plaintiff which is not a member of the Pension Scheme.

11) The plaintiff stated that it is a trade union which represents the interests of its members in all fronts and therefore it has locus standi to institute suits on behalf of its members whenever it becomes necessary.

12) With respect, I am persuaded by the plaintiff's argument. The Plaintiff, being an association that acts in the interest of its members, it has the express authority of the members of the pension scheme to represent them.

13) In the end, I find no merit in the preliminary objections. They are dismissed with costs abiding the outcome of the plaintiff's motion dated 7th September, 2020.

Dated, signed and delivered online via Microsoft Teams at Nairobi this 9th day of October, 2020.

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J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant