



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 865 OF 2016

(Before Hon. Lady Justice Hellen S. Wasilwa on 23rd January, 2017)

KENYA PETROLEUM OIL WORKERS UNIONCLAIMANT

VERSUS

PETROSOFT KENYA LIMITEDRESPONDENT

RULING

1. The Application before Court is the Preliminary Objection raised by the Respondents herein dated 13th June 2016 whereby they seek the pleading of the Claimant to be struck out on the following grounds:

- 1. The named Claimant is not an aggrieved party to bring this suit for and on behalf of the named employees.***
- 2. There is no evidence that his Honourable Court has given permission for one statement of claim to be filed on behalf of three employees.***
- 3. The pleading is not divided into paragraphs numbered consecutively and the same is incomplete.***
- 4. Some of the evidence attached to the pleading are illegible.***

2. The Respondents Applicant also stated that the 3 Grievants are the ones to bring the claim in Court and not the Union as provided under Section 87(1) of Employment Act.

3. They further contend that an employee can file a dispute in Court but the Union can only represent the Union under Section 22 of Employment & Labour Relations Court Act (ELRC).

4. The Respondents have also argued that Rule 4 of the Industrial Court (Procedure) Rules 2010 defines how a Statement of Claim can be instituted and that an officer of a Union cannot verify facts in an affidavit.

5. The Respondents want this suit struck out for the reasons above stated.

6. The Claimants have opposed the Preliminary Objection dated 13.6.2016 and state that there is no law barring Union representing the Grievants.

7. As to numbering of their pleadings, the Claimants insist they have complied. They also state that they are ready to furnish legible copies. They insist that this Court should consider the claim on substantive issues and not on procedure and so the Preliminary Objection should be dismissed.

8. The 1st issue is whether the Union can file a claim on behalf of certain Grievants. Section 12(2) of the Employment & Labour Relations Court Act states as follows:

“An application, claim or complaint may be lodged with the Court by or against an employee, an employer, a trade union, an employer’s organization, a federation, the Registrar of Trade Unions, the Cabinet Secretary or any office established under any written law for such purpose”.

9. The import of this provision is that the Union here becomes a representative of the employee. The reading of this law is that when the Union lodges such a claim, in case of dismissal or termination, they act as a representative of the employee. However, the employee ought to be the one to file the claim in their names. This mischief that has existed over time has since been corrected by Rule 6 of the Employment & Labour Relations Court (Procedure Rules) 2016 which state that:

“where a claim is referred to court in accordance with the provisions of any written law other than the Labour Relations Act under Rule 5, the Statement of Claim shall:

a) Be signed by the Claimant or by the advocate of that Claimant or;

b) If the Claimant is a body corporate, be signed by an authorized officer of the body corporate or its advocate”.

10. This claim was filed in Court on 16/3/2016 and it is my finding that this mistake is excusable and would not render the entire claim annulity by virtue of Article 159 of the Constitution.

11. I therefore will order that the Claimants be given an opportunity to remedy the situation and amend their claim within 30 days from today.

Read in open Court this 23rd day of January, 2017.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Obure for Claimant – Present

Balala for Respondent – Present