



Rugu v Tipape & another (Employment and Labour Relations Cause E816 of 2022) [2023] KEELRC 2232 (KLR) (28 September 2023) (Ruling)

Neutral citation: [2023] KEELRC 2232 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E816 OF 2022
BOM MANANI, J
SEPTEMBER 28, 2023**

BETWEEN

JOHN NJUGUNA RUGU CLAIMANT

AND

JOSEPH LEPAPA TIPAPE 1ST RESPONDENT

BANKING INSURANCE AND FINANCE UNION (K) 2ND RESPONDENT

RULING

1. The Claimant is an employee of the 2nd Respondent. The 1st Respondent is the acting General Secretary of the 2nd Respondent. In effect, both the Claimant and the 1st Respondent are employees of the 2nd Respondent.
2. By a letter dated 18th October 2022, the Claimant was suspended from duty for sharing with third parties' images of a cheque that he had been asked to deposit onto the 1st Respondent's account. The suspension was said to have been necessitated by the need to allow the 2nd Respondent room to investigate the Claimant's impugned conduct.
3. Aggrieved by this decision, the Claimant filed this action against both Respondents. It is the Claimant's case that the impugned suspension was unlawful. In addition, the Claimant has raised a plethora of complaints against the 2nd Respondent including nonpayment of house allowance, failure to be granted his annual leave and failure to be afforded annual salary increments.
4. Although the Claimant acknowledges that the 1st Respondent is not his employer, he appears to blame the 1st Respondent for allegedly having instigated the suspension which has since been lifted. A perusal of the letter suspending the Claimant from duty shows that the 1st Respondent signed it in his capacity as the acting General Secretary of the 2nd Respondent.



Preliminary Objection

5. In their Statement of Reply to the Claimant's action, the Respondents deny any wrongdoing that would warrant the Claimant taking them to court. In particular, the 1st Respondent avers that the inclusion of his name in the cause was unwarranted given that he was acting in his official capacity as the 2nd Respondent's General Secretary. The 1st Respondent avers that he has no employment relation with the Claimant to warrant the Claimant instituting this claim against him before the Employment and Labour Relations Court (ELRC).
6. The jurisdiction of this court is clearly set out in section 12 of the *Employment and Labour Relations Court Act*. The court only handles employment and labour relation disputes between employers and employees and other actors as more specifically set out under the *Act*. The *Act* does not confer jurisdiction on the court to entertain disputes between employees.
7. Importantly, even if it was to be assumed that the court has jurisdiction to entertain the dispute between the Claimant and the 1st Respondent, the Claimant has to demonstrate that the 1st Respondent is a necessary party to the action. The fact that the 1st Respondent signed the letter that sent the Claimant on suspension does not, of itself, render him a necessary party to the suit. It is not disputed that in signing the impugned letter of suspension, the 1st Respondent was discharging the function of General Secretary of the 2nd Respondent.
8. As a Trade Union, the 2nd Respondent is by virtue of section 21 of the *Labour Relations Act* considered as a legal person with capacity to sue and be sued in its own name. Therefore, if an employee of the 2nd Respondent has a grievance that arises from implementation of his contract of service with the 2nd Respondent such as the one that the Claimant presents, the employee should sue the 2nd Respondent but not officials of the 2nd Respondent. It is impermissible for the grievant to include the names of officials of the 2nd Respondent in the action merely because their decision, whilst discharging the functions of their office, has impacted on the employee's contract of service.
9. The Claimant cannot enforce his contractual rights with the 2nd Respondent against the officials of the 2nd Respondent. Neither is it necessary for the Claimant to sue officials of the 2nd Respondent in order to enforce his rights arising from his contract of service with the 2nd Respondent. Thus, the 1st Respondent does not qualify as a necessary party in the current action in line with the test of who a necessary party in a suit is as was set out in the case of *Boniface Omondi v Mathare Youth Sports Association & another* [2021] eKLR.
10. It was therefore unnecessary for the Claimant to drag the 1st Respondent into the current action. To allow the 1st Respondent's name to remain in the cause is to expose him to unnecessary costs and hardship in defending a suit in which no relief will ultimately issue against him.

Determination

11. The court arrives at the conclusion that the preliminary objection is merited.
12. In the court's view, there was no plausible reason why the Claimant dragged the 1st Respondent into this action.
13. Therefore, the 1st Respondent is declared an unnecessary party in the action.
14. Accordingly, the 1st Respondent's name is struck off the proceedings.
15. Costs of the application are granted to the 1st Respondent.



DATED, SIGNED AND DELIVERED ON THE 28TH DAY OF SEPTEMBER, 2023

B. O. M. MANANI

JUDGE

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

