



**Kenya Union of Road Contractors and Civil Engineering Workers v Debroso
Construction Company Limited (Employment and Labour Relations Cause
E510 of 2022) [2023] KEELRC 2646 (KLR) (26 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2646 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E510 OF 2022
MN NDUMA, J
OCTOBER 26, 2023

BETWEEN

**KENYA UNION OF ROAD CONTRACTORS AND CIVIL ENGINEERING
WORKERS CLAIMANT**

AND

DEBROSO CONSTRUCTION COMPANY LIMITED RESPONDENT

RULING

1. The respondent filed a Preliminary Objection dated 19/5/2023 against the suit to wit:-
 1. That the suit offends Sections 9(b) of the Magistrate's Court Act as read together with Section 7 of the *Magistrate's Court Act*, Section 29(4) of the Employment and *Labour Relations Act* and Article 169(2) of *the Constitution* of Kenya, for the reason that the Magistrate's Court has jurisdiction to hear the purported employment dispute.
 2. That the instant Memorandum of Claim is defective, bad in law, untenable and contrary to Order 1 rule 13 of the *Civil Procedure Rules*, 2010 as it is filed without written authority by the claimant to plead on behalf of the grievant:-
 - (a) Dominic Mwatha
 - (b) Paul Kanyi
 - (c) Nathan Mwaura
 - (d) Vincent Munene
 - (d) Monica Kariuki.



3. That the claimant lacks the locus standi to institute a suit against the respondent on behalf of its members as there is no recognition agreement between the parties as provided in Section 54(3) of the *Labour Relations Act*, 2007.
2. The claimant is Kenya Union of Road Contractors and Civil Engineering Workers suing on behalf of five (5) named grievants.
3. With regard to the 1st Preliminary Objection That this suit ought to have been filed before the Magistrate Court which have concurrent jurisdiction with the *Employment and Labour Relations Court*, we note That this is not a proper objection within the meaning of the principles set out in the case of *Mukisa Biscuit Manufacturing Co. Ltd -vs- West End Distributors Ltd* [1969] EA 696 where it was held:-

“So far as I’m aware, 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.”
4. Whereas it is true That the Magistrate’s Court and this Court have concurrent jurisdiction on employment claims where the employee earns not more than Kshs.80,000, That is not a bar for this Court to entertain and determine the matter. The Court has powers also to transfer the suit to the appropriate Magistrate’s Court suo moto or upon application but may not strike out a suit merely because this Court and the Magistrate Courts have concurrent jurisdiction over it.
5. With regard to the second objection, a union derives its authority to file suit on behalf of others from its own Constitution and the applicable provisions of the *Labour Relations Act*, 2007.
6. The union litigates on behalf of its members. Whereas it is prudent for the union to plead specifically That the grievants are members of the union, whether or not this is the case, remains a point of fact and not of law and may only be determined upon hearing of evidence on the matter. This is therefore not a suitable preliminary objection within the meaning attributed to it in the Mukisa Biscuits case (supra).
7. A union need not attach written authority to the suit filed on behalf of its members. It is however essential That the fact of membership is pleaded and or adduced in evidence.
8. Accordingly, the Preliminary Objections lack merit and are dismissed with costs in the cause.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 26TH DAY OF OCTOBER, 2023.

MATHEWS N. NDUMA

JUDGE

