



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO.E012 OF 2021

(Before D.K.N.Marete)

KENYA UNION PRE-PRIMARY EDUCATION TEACHERS.....CLAIMANT

VERSUS

SECRETARY, LAIKIPIA COUNTY PUBLIC SERVICE BOARD.....1ST RESPONDENT

COUNTY ASSEMBLY, LAIKIPIA COUNTY GOVERNMENT.....2ND RESPONDENT

RULING

This is an application by way of Preliminary Objection dated 7th April, 2021. It comes out as follows;

- 1. The 1st and 2nd Respondent are non-suited to be extent that they are employees of independent bodies in the County Public Service Board and the Laikipia County Government respectively that are capable of suing and being sued on their own right.*
- 2. The 1st and 2nd Respondents do not have capacity to enforce or abide by any of the Court Orders that may be issued against them in this cause.*
- 3. The grant and attempt to implement the orders sought in the Application and suit would result in the infringement of Section 196 of the Public Finance Management Act No.18 of 2012 and Rule 25 of the Public Finance Management Act (County Government) Regulations for which the 1st and 2nd Respondent would be liable for imprisonment under the said law.*
- 4. This suit is in abuse of process and should be dismissed with costs.*

The Respondents in an outline of the matter before court submits that the claimant seeks that the Respondents pays them the cumulative union dues in arrears from year 2019 to date with interest at court rates.

The Respondents also submit to a case of misjoinder of parties. She cites on absence of an employer/ employee relationship or even not being direct remuneration of the respondents. The remedies sought are not payable by the Respondents and their application and orders sought therefore become an academic exercise.

It is noted that the Respondents seek to apply the celebrated authority of **Mukhisa Biscuits vs Westend Manufacturers Limited (1969) E.A 696** on the ambit and meaning of a preliminary objection but do not spell its relevance to this particular objection.

The Respondents further seek to buttress their case by relying on the authority of **Appex International Limited & Anglo Leasing Finance International Limited vs. Kenya Anti-Corruption Commission**, which cited with approval the case Nigerian case of **Goodwill & Trust Investment Ltd and Another vs.Witt & Bush Ltd**, where the court held as follows;

- a) Whether the suit at the trial court was properly constituted for want of proper parties,*
- b) Whether the 1st appellant has legal personality to institute the suit, that is, to sue and be sued.*
- c) The competence of the court to adjudicate the matter.*

They submit as follows;

The court observed that the issue of juristic personality... is a fundamental issue of law which touched jurisdiction, jurisdiction is defined as a term of comprehensive import embracing every kind of judicial action. The term may have different meanings in different contexts. It has been defined as the limits imposed on the power of a validly constituted court to hear and determine issues between persons seeking to avail themselves of its process by reference to the subject matter of the issues or to the purposes between whom the issues are joined or to the kind of relief sought- A court is competent when:

- a) It is properly constituted as regards members and qualifications of members of the Bench that no member is disqualified by one reason or another;*
- b) the subject – matter of the action is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction,*
- c) proper parties are before the court;*
- d) the action is initiated by due process of law and upon fulfilment of any condition precedent to the exercise of its jurisdiction.*

The Claimant in her written submissions dated 19th May, 2021 opposes the preliminary objection. She seeks to rely on the authority of **Oraro vs Mbaja (2005) eKLR 141**, where the court held thus;

“Anything that purports to be a preliminary objection must not deal with disputed facts and must not derive its foundation from factual information which stands to be tested by normal rules of evidence.”

Her further argument is that the Respondents notion of separation of a County Government is fallacious in that a County Government indeed comprises of an Executive and County Assembly. This justifies a suit against the County Assembly as the figure head in charge of the entire County Government.

The Claimant further goes on to demolish the various support mechanism for the preliminary objection and submits that this is another attempt at the Respondents’ defence and demeaning of this court and her orders which amount to gross impunity.

Lastly, the claimant argues and submits that the joinder is intended to achieve the overriding objective of this court with intent of conferring the various issues of dispute now before this court.

Having scrutinized the various cases of the parties, I find against the preliminary objection. This is because it is based on whooping arguments and analysis of the law. The Respondents, as brought out in the suit have the relevant competencies to stand as such Respondents and should contend with this and proceed to defend the suit, if at all.

Of the two cases, the claimant’s one is the more convincing and carries the day. The legal basis of the objection falters and fails and therefore makes it unsustainable.

I am therefore inclined to dismiss the application with costs to the Claimant/Respondent.

DATED AND DELIVERED AT NYERI THIS 23RD DAY OF MARCH, 2022.

D.K.NJAGI MARETE

JUDGE

Appearances

1. Mr. Samuel Opiyo for the Claimant Union/Respondent
2. Miss. Mutungi holding brief for Muchemi instructed by Mutungi Githinji & Company Advocates for the Objector/Respondents.