



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT ELDORET

CAUSE NO 27 OF 2020

JOHN ODHIAMBO OGARA.....CLAIMANT

VERSUS

KENYA UNION OF POST PRIMARY EDUCATION TEACHERS AND 3 OTHERS.....RESPONDENT

RULING

1. By Motion dated 17th August, 2020, the 1st respondent moved the Court for orders among others that the claim herein be struck out on the grounds among others that the suit is sub judice.
2. According to the 1st respondent the suit was a disguised attempt by the Claimant to have the Court adjudicate on the validity of a consent order dated 15th July, 2019 entered in Nairobi ELRC 97 of 2018 Kepha Oguni Langiir KUPPET and 3 others.
3. The application was supported by the affidavit of Akelo Misori sworn on 17th August, 2020 in which he deponed on the main that :-
 - i. THAT I am the Secretary General of the Applicant well conversant with the facts surrounding this matter and duly authorized to swear this affidavit on behalf of the applicant.
 - ii. THAT the applicant is a duly registered Trade Union that enjoys recognition by the employer to represent over 185,000 post primary teachers and trainers in Kenya.
 - iii. THAT the applicant Trade Union is also a party in Nairobi ELRC 521/2019 -KEPHER OGUWI LANGI VRS KENYA UNION OF POST PRIMARY TEACHERS (KUPPET) THE PS MINISTRY OF EDUCATION DEPARTMENT OF VOCATIONAL AND TECHNICAL TRAINIGN, TEACHERS SERVICE COMMISSION (TSC) AND THE ATTORNEY GENERAL.
 - iv. THAT the said suit was brought by the Claimant Kepher Oguwi Langi alongside approximately 1,000 Co-claimants among them JOHN ODHIAMBO OGARA of payroll number 2009141824 and of Baringo TTI who appears as number 142 and (again) as number 193 in Kepher Langi's (un-paginated). Further supporting Affidavit dated 12th September, 2019.
 - v. THAT having read and having our Advocates on record explain to me the Statement of claim of Kepher Langi his suit seeks the following orders lifted directly from Annexure AM1.
 - a) S Declarant that the Consent Order entered into between the Respondent's and recorded as an order of the court on 15th July, 2019 is incantational null and void.
 - b) A Declaration that no employer can affect any deductions of union dues unless Form "S" duly signed by the employee(s) has been received from the said trade union and validation as to its validity is ascertained.
 - c) An order to set aside section of the Consent Order dated 15th July, 2019.
 - d) Any other relief which the Court may deem fit to grant.
 - e) Costs of the claim be provided for.
 - vi. THAT one cannot fail to see the uncanny similarity between the above prayers and those orders prayed for by the Claimant herein

in his Statement of Claim dated 29th June, 2020 which again I wish to reproduce as herein below: -

(i) A Declaration that the Consent Order Section No. 3 and No.4 entered into between the Respondents and recorded as an order of the court on 15th July, 2019 unconstitutional unlawful, null and void.

A Declaration that no employer can affect any deductions of union dues unless from 'S' duly signed y the employee(s) has been received from the said trade union and validation as to its validity is ascertained.

(ii) An Order to set aside section of the consent order no and no.4 dated 15th Jul, 2019.

(iii) Any other relief which the Court may deem fit to grant.

(iv) Costs of the claim be provided for.

vii. THAT similarly the subject Claimant's Application seeks to set aside the Consent Order of 15th July 2019 which is the same substantive order sought in Kepher Langi's Application dated 9th August, 2019.

viii. THAT I am advised by our Advocates on record which advice, I verily believe to be true that in light of the foregoing the instant suit offends Section 6 of the Civil procedure Act which seeks to prevent the abuse of the court process where parallel proceedings are heard before two different courts with concurrent jurisdiction.

4. The 3rd respondent filed grounds of objection which in essence supported the 1st respondent's position.

5. The Claimant's in the present suit avers that he never authorized the Claimant in Nairobi ELRC No 521 of 2019 to represent him. At the same time, he alleges that he wants part of the consent recorded in ELRC No 521 of 2019 on 15th July, 2019 set aside. it is a settled principle of litigation that a party cannot approbate and reprobate at the same time. That is to say, no one is allowed to pick and choose parts of the same transaction and reject the rest.

6. The question whether the Kepher Langi had the Claimant's authority to commence ELRC No 521 of 2019 is best resolved by having this claim tried side by side with ELRC No 521 of 2019 or if convenient consolidated therewith.

7. In the circumstances the Court will not strike out the suit for being sub judice but would direct that the same be transferred to ELRC Nairobi to be considered alongside or if convenient consolidated with ELRC No 521 of 2019.

8. It is so ordered.

Dated at Eldoret this 12th day of January 2021

Abuodha Jorum Nelson

Judge

Delivered this 12th day of January 2021

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha Jorum Nelson

Judge