



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO 1138 OF 2016

KENYA BUILDING, CONSTRUCTION, TIMBER

& FURNITURE INDUSTRIES EMPLOYEES UNION.....CLAIMANT

VS

RONGAI TIMBER PRODUCTS.....RESPONDENT

RULING

1. This ruling flows from the Respondent's Preliminary Objection raised by notice dated 12th March 2020. The Objection is based on the following grounds:

- a) That the suit is fatally and incurably defective having been filed and maintained against an entity without legal personality or capacity to be sued in its own name;
- b) That the suit is fatally defective having been filed and maintained by an entity without the requisite *locus standi* to sue on behalf of individual claimants specified in the Memorandum of Claim contrary to Section 54(3) of the Labour Relations Act;
- c) That the suit as filed and presently subsisting, is bad in law and an abuse of the court process.

2. There are two limbs in the Respondent's Objection. The first is on the description of the Respondent. In this regard, the Respondent takes issue with the lack of the word '*Limited*' and for this reason concludes that the Respondent has no capacity to be sued.

3. In response, the Claimant submits that the Grievants gave the name of their employer as they knew it.

4. Faced with the issue of description of an employer in *Kenya Hotels and Allied Workers Union v Diani Sea Resort t/a Carslake Nominee Limited [2015] eKLR Rika J* stated the following:

“Employees cannot be closed out from pursuing their Claims on the ground that they have given the Court the wrong description, of the business and legal structures which constitute their Employers. Employees hardly know what these capacities are, and what the Employers' business and legal structures are.....Employees would be hampered in correcting employment wrongs, if they are expected to sift through these multiple layers before filing their claims.”

5. I agree. Employees will know their employers by the name disclosed to them and it would be a travesty of justice for the Court to strike out a claim simply because the neat legal description has not been given. That dispenses with the first limb of the Objection.

6. The second limb has to do with the *locus standi* of the Claimant Union to bring this claim in its own name, on behalf of its members.

7. This Court dealt with this issue in *Kenya Shoe & Leather Workers Union v Modern Soap Factory [2018] eKLR* and affirmed that a trade union has the capacity to sue an employer on behalf of its members, irrespective of whether or not it has a Recognition Agreement with the employer.

8. The matter went on appeal to the Court of Appeal and in its decision in *Modern Soap Factory v Kenya Shoe and Leather Workers Union (Civil Appeal No 37 of 2019)* the appellate court rendered itself thus:

“Article 41 of the Constitution of Kenya on labour relations protects the right of every person to fair labour practices and the right, among others, to join a trade union, which in turn has the right to determine its activities. Article 258 of the Constitution on enforcement of the Constitution provides in Article 258(2)(d) that an association acting in the interest of one or more of its members may institute proceedings where the Constitution is contravened or threatened with contravention.....

We can see no reason therefore to fault the conclusion by the Judge that the respondent has locus standi to institute the claims on behalf of its members. That said, whether an employee is a member of a union is a question of fact. Where there is a contest as to whether an employee is a member of a union, evidence would be required to settle that question. It is not a matter that is amenable for determination on the basis of a preliminary objection.....

A recognition agreement.....is not the basis upon which the trade union represents its members in court.”

9. As stated by Rika J in *Kenya Hotels and Allied Workers Union v Diani Sea Resort t/a Carslake Nominee Limited* (supra):

“The law allows the Trade Union to file Claims for its Members, individually or collectively, in its own name, and take responsibility for the outcome of such Claims. This is an important method of affording Workers protection against the vagaries of litigation. They are encouraged to pursue Claims, buffered by the name of their Trade Unions, and never afraid that, Employers may pursue them on costs, and to utter ruination, in the event they lose their Employment Claims. It affords Workers an important tool in accessing industrial justice, as is desired through the Article on access to justice in the Constitution of Kenya.”

10. I have nothing more to add except to say that this unique right offered to workers should be guarded jealously.

11. Pursuant to the foregoing findings and conclusions, I find and hold that the Respondent’s Preliminary Objection is not well taken and proceed to overrule it with costs in the cause.

12. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OCTOBER 2021

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JUDGE

Appearance:

Miss Chege for the Claimant

Mr. Muchiri for the Respondent