



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 245 OF 2019

(Before Hon. Lady Justice Maureen Onyango)

KENYA PRIVATE UNIVERSITIES UNION.....CLAIMANT

VERSUS

KENYA KAZI SECURITY LIMITED.....RESPONDENT

RULING

Before this Court for determination is the Respondent's preliminary objection dated 24th April 2019 brought on the following grounds-

1. The Claimant lacks the *locus standi* to sue on behalf of the grievants for reason that-
 - a. There is no employer-employee relationship between the Claimant and the Respondent.
 - b. There is no recognition agreement between the Claimant and the Respondent.
2. The suit is bad in law and should be dismissed with costs to the Respondent.

The preliminary objection was disposed of by way of written submissions and highlighted in open court. The Respondent filed their written submissions on 3rd June 2019 while the Claimant relied on the written submissions filed on 10th May 2019.

Mr. Makori, counsel for the Respondent submitted that the Claimant did not have the *locus standi* to institute these proceedings because there was no recognition agreement and neither is there an existing employment relationship. They submit that in the affidavit of Mr. Lucas Naikuni sworn on 4th September 2019, he admits that the Claimant is an intruder. Further, that the Court in Nairobi ELRC Petition 49 of 2018 found that the Claimant was an intruder.

Mr. Lemei, counsel for the Claimant submitted that the 300 grievants in the suit did not require the Respondent to recognize the union for this suit to be instituted. Further, that the Respondent has not proved that it was a requirement, and relied on the case of ***Kenya Shipping, Clearing and Warehouses Workers Union vs. Sunripe (1976) Limited [2018] eKLR***. As such, the preliminary objection is misconceived.

He submitted that on 28th June 2019, the Court in Petition 49 of 2018 delivered a judgment where the Court found that the Claimant had *locus standi* to continue representing the grievants. He stressed on the word "*continue*" because the Respondent had been previously ordered to deduct and remit union dues, and it complied until the issuance of the judgment. It was his submission that pursuant to the judgment, the Claimant had no *locus standi* to represent the 300 grievants.

Counsel submitted that the preliminary objection had been overtaken by events as he had filed an Application to have the Claimant substituted with the 300 grievants.

In his rejoinder, Mr. Makori submitted that a party who is not a party to the proceedings could not come to court to plead their case. He further submitted that at the time of filing the suit, the union did not have *locus standi* and that the Respondent was submitting union dues only in compliance with Court orders.

Analysis and Determination

I have considered the submissions by the parties and the authorities cited. The following are the issues for determination –

- a. Whether the Claimant has the *locus standi* to represent the litigants in this suit and

b. Whether the Claimant should be substituted by the individual grievants.

Locus Standi

The Court in **Kenya Scientific Research International Technical and Institutions Workers Union v Black and Beauty Products & Another [2018] eKLR** clarified the import of section 54 (1) of the Labour Relations Act where it held-

“A recognition agreement is therefor only necessary for purposes of negotiation of a collective bargaining agreement... Recognition must of necessity be preceded by workers joining membership of a union, as it is only after a union attains membership of a simple majority that it qualifies for recognition. The right to representation is acquired by membership and it is not necessary for a union to be recognized in order to represent its members. ...”

This Court in Petition 49 of 2018 as consolidated with Petition 123 of 2018 declared that the Claimant had no *locus standi* to represent the grievants, vide the judgment delivered on 28th June 2019. The Court found that the Kenya National Private Security Workers Union was the appropriate sector union for employees in private security, a fact that was admitted by the Claimant’s counsel when he was highlighting submissions.

The Court in **Alfred Njau & 5 others vs. City Council of Nairobi**

[1983] eKLR defined locus standi in the following terms-

“The term locus standi means a right to appear in Court and, conversely, as is stated in Jowitt’s Dictionary of English Law, to say that a person has no locus standi means that he has no right to appear or be heard in such and such a proceeding.”

This being an issue that the court has finally rendered itself in Petition No. 49 of 2018 and which fact is within the claimant’s knowledge, the claimant has no locus standi. The suit having been filed by a person without locus standi, is a nullity and cannot be cured by substituting the grievants with the claimant in Willis Evans Otieno –V- Law Society of Kenya (2011) eKLR stated –

“The Court of Appeal decision in Kenya Power and Lighting Company –v- Chris Mahinda t/a Nyeri Trade Centre (2015) I KLR is sufficient authority for the aforesaid holding. That deficiency cannot be cured by the notice of intention to act in person that was filed by the petitioner... long after the documents on record had been filed by an unqualified person. They cannot be validated by the petitioner’s withdrawal of instructions from the unqualified advocate who had file the same.”

The preliminary objection therefore succeeds and the suit is struck

out with costs to the respondent.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 24TH DAY OF JANUARY 2020

MAUREEN ONYANGO

JUDGE