



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 490 OF 2018

BETWEEN

**KENYA SHIPPING CLEARING FREIGHT LOGISTICS AND
WAREHOUSES WORKERS UNION.....CLAIMANT**

VERSUS

PORTLINK LOGISTICS LTD.....RESPONDENT

RULING

1. The Claimant filed its Statement of Claim on 12th October 2018. It avers to have a Recognition Agreement with the Respondent. Parties do not have a Collective Bargaining Agreement.

2. The Claim involves arrears of salary and redundancy benefits, allegedly owed by the Respondent to Claimant's Members, presumably former Employees of the Respondent.

3. The Prayers sought in the Statement of Claim are:-

- a) The Respondent to pay Employees their outstanding salaries forthwith.
- b) The Respondent to pay Employees their redundancy benefits.
- c) The Respondent to sell some of its assets to clear the salary arrears and redundancy benefits.
- d) The Respondent to pay the costs of this Claim.

4. The Respondent has not yet filed a Statement of Response, but filed a Notice of Preliminary Objection on 30th October 2018, alleging that the Claim is a non-starter, premature and fails to disclose any reasonable cause of action against the Respondent. It is also stated that the Court is divested of jurisdiction.

5. Parties agreed on 31st October 2018, to have the Preliminary Objection considered and determined on the strength of their Pleadings, Affidavits, Documents and Submissions on record. They confirmed filing of Submissions, on 11th February 2019.

6. The Respondent withdraws objection based on jurisdiction, while retaining the other ground on failure to disclose a reasonable cause of action.

The Court Finds:-

7. Even assuming Employees of the Respondent are owed salaries and redundancy benefits, it is not proper for the Court to order the Respondent, in its Judgment, to sell some assets, to pay Employees salaries and redundancy benefits.

8. It ordinarily would be the responsibility of the Claimant, to prosecute the Claim, and prove that indeed Employees are owed salaries and redundancy benefits. After obtaining Judgment in its favour, the Claimant would be at liberty to identify and attach Respondent's assets, in recovery of salaries and redundancy benefits. This would be the correct approach, in a sustainable Claim.

9. What the Claimant seeks under paragraph 6(c) of the Statement of Claim is not specific or proper and cannot be granted by the Court. It would be a matter to be taken up in execution proceedings, if and after, the Claimant obtains a Judgment showing Employees are owed salaries and redundancy benefits, by the Respondent.

10. The Claimant does not clearly identify the Employees on whose behalf the Claim is made. The Employment and labour Relations Court Rules, require that Claims of this nature, are accompanied by details of the Employees; details of their wages; and particulars of breaches, and reliefs sought. Claimants must give certain details, clearly specifying why the Claim is before the Court.

11. The Claimant relies on lists of Employees attached to the Statement of Claim, titled 'Workers Positions and Unpaid Months Arrears' and 'Tabulations.' The lists are not signed. Their authorship is undisclosed. Similarly another list of Motor Vehicles alleged to belong to the Respondent is exhibited. No evidence of ownership is given. The lists have no probative value, and lack basic features of authentic documents or pleadings, such as signatures and dates.

12. The Claim is ambiguous in other aspects. Redundancy benefits are sought. It is not disclosed when redundancy happened. The letters attached to the Statement of Claim, from the Claimant to the Respondent, do not mention redundancy. They repeatedly mention arrears of salary, suggesting that Employees were in employment, on the dates these letters issued. When did redundancy take place?

13. The List of Documents filed by the Claimant refers to Minutes of a Joint Meeting, held by the Parties. It is alleged that the Respondent agreed to pay employees arrears of salary at this meeting. There is no document in form of Minutes of a Joint Meeting, held on any day, between the Parties, attached to the Statement of Claim. Incoherently, the Claimant pleads "*Further, the Respondent return back to times of not paying Employees on monthly basis.*"

14. In conclusion, the Claimant does not state clearly who are the Employees on whose behalf the Claim is presented; employment details are unclear; it is not known if, or when, redundancy took place; there is not a single contract of employment exhibited; no employee has sworn an Affidavit supporting the position on redundancy benefits or arrears of salary; the Statement of Claim alludes to Employees who are in active employ of the Respondent; reference is made to an agreement made between the Parties in a meeting which is said to have been minuted; no minutes of any meeting have been availed to the Court; and lastly, the Court is improperly prayed to order the Respondent to sell some of its assets to clear salary arrears and redundancy benefits. The Pleadings filed by the Claimant fall far short of the standards required under Rules which regulate the proceedings of this Court. It is not clear if the Claim is presented on behalf of existing or former Employees of the Respondent. No effort has been made to amend the Claim, although notified by the Respondent way back in October 2018, that the Claim does not disclose a reasonable cause of action. Instead, the Claimant filed what is titled as 'Defense Statement To The Preliminary Objection.' This document makes sweeping statements, such as "*salary arrears means debt. It is common sense that if the Respondent has debts, the only option is to clear them by way of selling some assets... there is no process to be followed when one demands salary.*" How does the Claimant proceed before the Court, if there is no process to be followed in demanding for salary? It is not disclosed, what period, arrears of salary relate to. There is no date affixed to the Claim for arrears of salary. There is no date pleaded with regard to redundancy. There can be no cause of action, in a situation where no date is given at all, showing when that cause accrued. It is therefore correct for the Respondent to hold that the Claim, discloses no reasonable cause of action against the Respondent. The Claimant has not established a set of facts, sufficient to justify a right to sue the Respondent.

IT IS ORDERED:-

a) The Preliminary Objection filed by the Respondent on 30th October 2018 is allowed.

b) The Claim is struck out.

c) No order on the costs

d) The file is closed.

Dated and delivered at Mombasa this 27th day of March 2019.

James Rika

Judge