



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1324 OF 2017

BERNARD BARONGO AMWOMA & 116 ORS.....CLAIMANTS

VERSUS

ORBIT CHEMICAL INDUSTRIES LTD.....1st RESPONDENT

INSIGHT MANAGEMENT CONSULTANTS LTD.....2nd RESPONDENT

RULING

1. For determination is a motion dated 9 November 2018 by the 2nd Respondent seeking orders

1. The Honourable Court be and is hereby pleased to strike out this suit.

2. The costs of this motion and of the suit be borne by the Claimants.

2. The grounds advanced in support of the application were that the Claimants were members of the Kenya Chemicals & Allied Workers Union (the Union) and that a dispute arose between the Claimants and the 2nd Respondent and that consequently, the Union on behalf of the Claimants and the 2nd Respondent entered into negotiations; that during the negotiations, the Union and the 2nd Respondent reached an agreement on 23 July 2016 upon which the Claimants and other employees were paid terminal dues in consideration of entering into fresh employment contracts and that despite the payments, the Claimants instituted these legal proceedings seeking payment of terminal dues which had been paid; that the Union having reached an agreement with the 2nd Respondent, the Claimants, members of the Union, could not purport to circumvent the provisions of section 73(3) of the Labour Relations Act by suing in their individual capacities;

3. Upon service of the motion, the 1st Claimant filed a replying affidavit on behalf of all the Claimants, in opposition to the application.

4. The 1st Claimant asserted in the replying affidavit that they were alleging in the instant proceedings unfair labour practices, unfair termination of employment and the attendant remedies thereto; that there was no law prohibiting/barring an employee who is a member of a trade union from instituting legal proceedings in an individual capacity against an employer; that there were no negotiations between the Union and the 2nd Respondent on 23 July 2016; that the 2nd Respondent was a stranger to the Claimants employment contracts; that the rights sought to be asserted were constitutional and finally that the Union and the 2nd Respondent were colluding to defeat the claims.

5. The Court took oral arguments on 28 January 2019 and on 29 January 2019. Case law was cited during the taking of arguments.

6. The Court has anxiously considered all the material placed before it.

7. In the Memorandum of Claim filed in Court on 14 July 2017, the Claimants presented several distinct causes of action and/or heads of claim and in brief these were unfair labour practices (drawing of contracts by one party while services are provided to a different entity, short term contracts over 10 years); breach of contract; purported failure to comply with the Employment Act/ breach of statute and unfair termination of employment.

8. The Court has also looked at the minutes of a meeting held on 22 July 2016 between the Union and the 2nd Respondent.

9. The minutes appear to suggest a mutual separation arising from operational requirements of the Respondents and an intention to pay dues/benefits as envisaged under the law.

10. It is clear to the Court that the cause(s) of action/heads of claims being agitated for by the Claimants go beyond the parameters of redundancy and issues addressed in the agreement of 22 July 2016.

11. Some of these questions are whether fixed term contracts spread over many years amount to unfair labour practices and, the ostensible authority of the Union, when it had not been granted recognition by the Respondents to represent and commit employees/the Claimants in reaching any compromise.

12. And if the Union had ostensible or any authority, there is nothing on record to show that the Respondents paid dues in accordance with the law.

13. In the view of the Court, the cause(s) of action presented by the Claimants raise substantial factual and legal questions which require an in-depth examination. It would be an injustice to shut the Claimants from the temple of justice summarily in the circumstances.

14. The motion is dismissed. Costs in the cause.

15. The Court will hereafter issue pre-trial directions.

Delivered, dated and signed in Nairobi on this 15th day of March 2019.

Radido Stephen

Judge

Appearances

For Claimants Mr. Koceyo instructed by Koceyo & Co. Advocates

For 1st Respondent Ms. Oseko instructed by Oseko & Ouma Advocates

For 2nd Respondent Mr. Mudao instructed by Mudao & Co. Advocates

Court Assistant Lindsey