



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
ELRC CAUSE NO. 387 OF 2018

(Before Hon. Justice Hellen S. Wasilwa on 3rd April, 2019)

KENYA NATIONAL UNION OF NURSES (K.N.U.N).....CLAIMANT/APPLICANT

VERSUS

NATIONAL INDUSTRIAL CREDIT (NIC) BANK.....RESPONDENT/DEFENDANT

RULING

1. The Respondent, National Industrial Credit (NIC) Bank filed a Notice of Preliminary Objection dated 9th April 2018 in response to the Notice of Motion Application dated 22/03/2018 filed by the Claimant, Kenya National Union of Nurses (KNUN). The Respondent is seeking to raise a Preliminary Objection on a point of law that:-

1) This Honourable Court has no jurisdiction to entertain the Application dated 22nd March 2018 as the same does not fall under the purview of Section 12 of the Industrial Court Act 2011.

2) The Application is an abuse of the process of the Court.

3) The Application is hopelessly incompetent, fatally defective and inadmissible and the same ought to be dismissed forthwith.

2. The Claimant then filed its Grounds of Opposition to the Notice of Preliminary Objection dated 14th May 2018 on the following grounds:-

1. That the Preliminary Objection is totally incompetent for want of being in contravention of the Labour Relations Act, 2007 Section 47 (1) (a).

2. That the Respondent together with the signatories to the account No. 1004699676 Eldoret Branch are illegally, fraudulently receiving, holding and expending union dues contrary to the provisions of the Labour Relations Act, 2007 Section 39, 42(1), 48, 50(1) and (9).

3. A further Grounds of Opposition dated 3rd December 2018 was then filed by the Claimants on 04/12/2018 opposing the Preliminary Objection on further grounds that:-

a) It is incompetent, lacks merit, is fatally defective and cannot be ventilated for orders sought.

b) The said application offends the mandatory provisions of Article 159(2) (d) of the Constitution of Kenya.

c) The Application before Court is made in bad faith and as such the Honourable Court ought to stop the abuse of the Court process being perpetrated by the Applicant.

d) No ends of justice or value will be served by the application.

e) The continued pendency of the Preliminary Objection herewith is a clear case of abuse of Court process.

Respondent's Submissions

4. The Respondent submits that Jurisdiction is everything as it goes to the root of the entire suit and so any decision made by a Court that has no jurisdiction is a nullity. It cites the case of **The Owners of Motor Vessel Lilian “S” vs. Caltex Oil Kenya Ltd [1989] KLR 1** where it was held that a Court must down its tools in respect of a matter before it the moment it makes a finding that it does not have the jurisdiction.

5. Further, that the Supreme Court of Kenya similarly pronounced itself in **Samuel Kamau Macharia & Another vs. Kenya Commercial Bank Limited & 2 Others [2012] eKLR** that the issue whether a Court of law has jurisdiction to entertain a matter before it is not one of mere procedural technicality but is the heart of the matter since without jurisdiction, the Court cannot entertain any proceedings.

6. It submits that the jurisdiction of this Court emanates from **Article 162(2) (a) of the Constitution**, which provides it with the mandate to determine disputes relating to employment and labour relations and that Parliament further enacted the Employment and Labour Relations Court Act No. 20 of 2011, which establishes this Court. That this suit does not fall anywhere within the jurisdiction of this Court as contemplated by **Section 12(1) of the Employment and Labour Relations Court Act** which sets out the jurisdiction of this Court as follows:-

(1) The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including:-

a) disputes relating to or arising out of employment between an employer and an employee;

b) disputes between an employer and a trade union;

c) disputes between an employers’ organisation and a trade union’s organisation;

d) disputes between trade unions;

e) disputes between employer organisations;

f) disputes between an employers’ organisation and a trade union;

g) disputes between a trade union and a member thereof;

h) disputes between an employer’s organisation or a federation and a member thereof;

i) disputes concerning the registration and election of trade union officials; and

j) disputes relating to the registration and enforcement of collective agreements.

7. It is submitted by the Respondent that the Claimant has failed to enjoin its members whom it alleges are siphoning money through an account in the Respondent bank and that a perusal of the Claimant’s Pleadings and documents shows that this matter can be construed as a civil or commercial dispute which is outside the ambit of employment and labour relations dispute. It relies in **Republic vs. Karisa Chengo & 2 Others [2017] eKLR** where the Supreme Court held that the Employment & Labour Relations Court, the Environment & Land Court and the High Court are different and autonomous Courts exercising different and distinct jurisdictions. That as Article 165(5) precludes the High Court from entertaining matters reserved to the ELC and ELRC, it should similarly be inferred that the ELC and ELRC cannot also hear matters reserved to the jurisdiction of the High Court.

8. The Respondent finally submits that since this dispute is not contemplated under Article 162(2) (a) of the Constitution or Section 12 of the Employment and Labour Relations Court Act, it is clear that the Respondent has not been sued in the capacity of an employee, employer, employer organization or trade union. The Respondent prays that the application and the entire suit is dismissed for want of jurisdiction.

9. Despite the Claimant being given more time to file its submissions as directed by this Court on 25/02/2019, they have failed to file the same.

10. I have examined the averments on record. The Claimant filed this case on 22.3.2018 through a Memorandum of Claim dated even date. The Claimant stated in the Claim that the issues in dispute was:-

1) “Fraudulent diversion of union funds transactions into Bank Account No. 1004699676 being operated in the Respondent’s Eldoret Branch.

2) Economic sabotage and denial of Constitutional rights to the Claimant and her members by the conspirators of the Respondent operating Bank Account No. 1004699676 being operation in the Respondent’s Eldoret Branch”.

11. The Claimant sought orders before this Court to freeze the said Account No. 1004699676 and also to quash instruments used in opening this Bank Account.

12. The Claimant have not demonstrated that there are any moneys in form of union dues being diverted by “some people” who are not named into the alleged Account. It is not clear whether the said money emanated from union dues or not or whether unnamed unscrupulous people are union members.

13. In the absence of this confirmation, the matter before me is a purely commercial dispute for which this Court has no jurisdiction to handle. I therefore agree with the submissions of the Applicant and allow the Preliminary Objection and strike out this Claim with costs to the Respondents.

Dated and delivered in open Court this 3rd day of April, 2019.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Mbabu for Respondent – Present

No appearance for Claimant