



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1337 2018

(Before Hon. Justice Hellen S. Wasilwa on 16th September, 2019)

PUBLIC TRANSPORT OPERATORS UNION.....CLAIMANT

VERSUS

RWAKEN INVESTMENT LIMITED.....RESPONDENT

RULING

1. The Application before this Court is the Notice of Preliminary Objection dated 13th March, 2019 brought on grounds that:-

1. The Claimant then “PUBLIC TRANSPORT OPERATORS WORKERS UNION (K) had no capacity to file the current suit; consequently there is no suit capable of being amended or revived and the Respondent prays that the current suit be struck out with costs.

2. The amended Notice of Motion does not have a Supporting Affidavit as the Amended Supporting Affidavit is not an Affidavit.

3. The Applicant PUBLIC TRANSPORT OPERATORS WORKERS UNION (K) is a union for PUBLIC TRANSPORT OPERATORS and the Respondent’s workers are not eligible to be forced to join the said union.

4. The Applicant is yet to comply with Orders granted before moving this Court which required the Applicant to pay to the Respondent a sum of Kshs. 10,000/- as costs.

Submissions

2. The Claimant filed its Submissions to the Preliminary Objection where they submit that the Preliminary Objection filed herein is frivolous, vexatious and an abuse to the Court Process and is only meant to frustrate the Claimant from proceeding with this matter.

3. It is further submitted that the Claimant has capacity to institute the instant claim as it is a registered trade union and that it has between the period of October 2017 and May 2018 recruited 43 of the Respondent’s employees.

4. It also contended that the Legal Notice dated 8th May, 2014 directing for deduction for the Claimant

union contained an error where the same referred to the Claimant as both PUBLIC TRANSPORT OPERATORS UNION and PUBLIC TRANSPORT OPERATORS WORKERS UNION, which error was duly acknowledged by the Ministry of Labour and Social Protection.

5. The Claimant further avers that as a result of the error it was forced to apply to this Honourable Court to amend its pleadings. It is the Claimant's position that the said Amended Notice of Motion Application was properly supported by a Supporting Affidavit.

6. They further submit that the Preliminary Objection filed does not meet the threshold as set in the case of Mukisa Biscuits Manufacturing Ltd Vs West End Distributors (1969) EA 696 and Attorney General (Sued for and on behalf of the Ministry of Lands) & 2 Others Ex parte South and General (Thika) Investments Limited & Another.

7. The Claimant union further contends that the Respondent's employees are eligible to join a union of choice duly registered as it is a right protected under Article 36 of the Constitution of Kenya, 2010.

8. In conclusion, the Claimant urged this Honourable Court to dismiss the Preliminary Objection with costs to the Claimant.

9. There are no submissions filed on behalf of the Respondent herein.

10. I have considered the averments of both Parties. The contention by the Respondent is that the Claimant union has no capacity to prosecute this case as it is for employees in public transport for which the Respondent contend their employees are not.

11. The contention by the Respondent notwithstanding, Article 41 of the Constitution provide that an employee has a right to join a union of their own choice. It does not therefore matter that the Claimant is a union in public transport, when employees chose to join any union, the employer cannot fetter this right. In the circumstances, the Preliminary Objection as raised has no merit. I dismiss it accordingly.

12. Costs in the cause.

Dated and delivered in open Court this **16th day of September, 2019.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Parties