



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 751 OF 2017**

**(Before Hon. Lady Justice Hellen S. Wasilwa on 19<sup>th</sup> February 2018)**

**KENYA SHIPPING CLEARING AND**

**WAREHOUSES WORKERS UNION .....CLAIMANT**

**VERSUS**

**VEGPRO (K) LIMITED .....RESPONDENT**

**RULING**

1. The Application before Court is the Preliminary Objection dated 29<sup>th</sup> June 2017. The Application was filed by the Respondents herein on the grounds that:-

***1. The Applicant/Claimant's application is hopelessly misconceived, frivolous, totally devoid of merit and mala fides for the reason inter alia, that the applicant/claimant failed to disclose material fact s tot eh Court that he had filed Case No. 983 of 2017 seeking similar orders as disclosed in Cause No. 751 of 2017, which orders the Court declined to issue.***

***2. The present application as taken out, drawn and filed is incompetent, misconceived, fatally defective, unsustainable, bad and a nullity in law, merely intended to frustrate the Respondent therefore are of no legal consequence or at all.***

2. The Preliminary Objection is based on the various pleadings herein, the record of proceedings and the reply affidavit filed on 29<sup>th</sup> June 2017 on behalf of the Respondent Applicant.

3. The gist of this application as submitted by the Applicant is that the Claimant herein has filed cause No. 983/2017 seeking similar orders as in Cause No. 751.

4. The Applicant states that in this claim, the Applicant sought orders exparte which were declined. He then filed Cause No. 983 of 2017 which orders were granted on 2<sup>nd</sup> June 2017.

5. The Respondent Claimant opposed the Preliminary Orders and their main averment to the Preliminary Objection is that the Applicant has not responded to their application under Certificate of Urgency and is instead applying side shows.

6. In determining this issue, I will consider the pleadings in Cause No. 751 of 2017 and Cause No. 983/2017.

7. In Cause No. 983/2017, the Applicants appeared in Court on 29<sup>th</sup> May 2017 under Certificate of Urgency and sought various orders as follows:-

**1. That this Honourable Court be pleased to certify this Application as extremely urgent, services be dispensed with and it be heard ex parte in the first instance.**

**2. That there be temporary injunction restraining the 1<sup>st</sup> Respondent from sacking, victimizing, intimidating and harassing employees until the hearing and determination of this suit.**

**3. That the Honourable Court be pleased to direct and order the 1<sup>st</sup> Respondent to stop deductions and remittances of the sixteen (16) workers their union dues forthwith and refund the deducted union dues since 28<sup>th</sup> July 2016 to date.**

**4. That the 2<sup>nd</sup> Respondent to return the Union dues of the sixteen (16) employees from the time they stopped deductions 28<sup>th</sup> July 2016 to date.**

**5. That the Honourable Court be pleased to direct and order the 2<sup>nd</sup> Respondent from interfering with our sector mandated by the Applicant/Claimants constitution**

8. The Court granted orders in terms of prayer 1 and 2.

9. In Cause No.751/2017 filed on 20<sup>th</sup> April, 2017, the Claimant sought the following orders in the Application dated 20<sup>th</sup> April 2017:-

**1. That this Honourable Court be pleased to certify this Application as extremely urgent, services be dispensed with and it be heard Ex-parte in the first instance.**

**2. The Honourable Court be pleased to direct and order the Respondent deduct and remit union dues in respect of check off forms served dated on 18<sup>th</sup> November 2016, 22<sup>nd</sup> December 2016, 1<sup>st</sup> February 2017 and 6<sup>th</sup> February 2017.**

**3. That there be a temporary injunction restraining the Respondent from harassing, intimidating and or sacking any employee wishing to join and already joined Applicant/Claimant union.**

10. The Court directed them to serve the Respondents and the application is still pending in Court.

11. From the pleadings on the 2 files, I note the parties are the same save that in Cause No. 983/2017 there is an extra party who is the 2<sup>nd</sup> Respondent Union. There are similar orders being sought on the 2 files save that there are other orders than which directly affect the 2<sup>nd</sup> Respondent in the area of demarcation on Cause 983/2017.

12. However, prayers made herein are those already sought in Case 751/2017.

13. Section 6 of the Civil Procedure Code 2010 states as follows:-

**“No Court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed”.**

14. The principle has firmly been established in various case law see **Republic vs Chairman District Alcoholic Drinks Regulation Committee and 4 others and 2 others Ex-parte Detlerf Heier and Another 2013) eKLR;** where Angote J stated as follows:-

***“A party who wishes to file a suit which is similar to an existing suit must withdraw the first suit first. This Court cannot allow parties to be filing a multiplicity of suits on the basis that they have found the previous suit(s) wanting either in content or form. The Court must and should invoke its inherent jurisdiction to stop such abuse of the Court process.”***

15. I have agreed that this claim is a replica of the orders in 983/2017 and should not be entertained. In view of the fact that the orders sought herein cover those in Cause No. 983/2017, I strike out this claim being an abuse of the Court process.

Read in open Court this **19<sup>th</sup> day of February, 2018.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

James Thongi for Union – Present

Achiando for Respondent Applicant – Present