



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO. 2189 OF 2017

NELSON MANDELA INGOSI.....CLAIMANT

v

NACICO SACCO SOCIETY LTD.....RESPONDENT

RULING

1. On 3 November 2017, Nelson Mandela Ingosi through the Banking Insurance and Finance Union (Union) instituted legal proceedings against Nacico Sacco Society Ltd (Respondent) and he stated the Issue in Dispute as wrongful/unfair summary dismissal from employment of Nelson Mandela Ingosi.
2. Upon service of Notice of Summons and the Statement of Claim, the Respondent filed a Response on 22 November 2017 through Modi & Co Advocates.
3. On 9 January 2018, the Respondent moved Court seeking
 1. **THAT**, the suit herein be struck out and/or dismissed with costs.
 2. **THAT**, the costs of the application be provided for.
4. When the application was placed before Court on 25 January 2018, the Union sought for time to file a response and the Court gave it up to 26 January 2018. On that date, hearing was rescheduled to 1 February 2018.
5. The Union did not file any response to the application as directed and when it came up for *inter partes* hearing on 1 February 2018, it was not represented.
6. Because the date had been scheduled in the presence of the General Secretary of the Union, the Court allowed the Respondent to prosecute the application.
7. The main ground presented by the Respondent in seeking the striking out of the Statement of Claim was that there was pending Nairobi Cause No. 673 of 2017, *Nelson Mandela Ingosi v Nacico Co-Operative Savings & Credit Society Ltd* in which the cause of action was outlined as unlawful summary dismissal on 25 April 2016.
8. In the instant Cause, the Union has set out the cause of action as summary dismissal on 25 April 2016.
9. It is obvious that there are two Causes arising out of the summary dismissal of the Claimant on 25 April 2016, the only difference being that in Cause No. 673 of 2017, *Nelson Mandela Ingosi v Nacico Co-Operative Savings & Credit Society Ltd*, the Claimant presented the Cause through *Matheka &*

Oketch Advocates.

10. In the view of the Court, presenting two different Causes on the same cause of action is an abuse of the Court process.

11. The Court consequently upholds the application dated 9 January 2018 and orders

(a) The Statement of Claim filed in Court on 3 November 2017 is hereby struck out.

(b) The Claimant to meet the Respondent's costs.

Delivered, dated and signed in Nairobi on this 2nd day of March 2018.

Radido Stephen

Judge

Appearances

For Claimant Mr. Munoru, General Secretary, Banking Insurance & Finance Union (K)

For Respondent Mr. Modi instructed by Modi & Co. Advocates

Court Assistant Lindsey