



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

PETITION NO. 27 OF 2017

(Before Hon. Justice Mathews N. Nduma)

KENYA NATIONAL FARMERS FEDERATION (Suing through its Registered Officials Namely Hon. Nduati Kariuki (Chairman) Prof Kaburu M'Ribu (Secretary) and Grace Ngambi (Treasurer) suing on its own behalf and in the interest of the 23 Petitioners listed herein.....1ST PETITIONER

GEORGE NYAMU2ND PETITIONER

BENARD M. MULANDI3RD PETITIONER

COLLINS ODHIAMBO ONDIEK4TH PETITIONER

DORCAS ATIENO WAMBIA5TH PETITIONER

MUGAMBI EDWARD NKUBIRI6TH PETITIONER

FAITH NZESE MAITHYA7TH PETITIONER

BEN RONO8TH PETITIONER

GILBERT KIPKORIR TANUI9TH PETITIONER

ISAAC THURANIRA10TH PETITIONER

JOHN OKARI OKIOGA11TH PETITIONER

KELVIN MURITHI NJERU12TH PETITIONER

LABAN KAARA MWANIKI13TH PETITIONER

MISHECK KIOGORA14TH PETITIONER

NANCY NTINYARI MWONGELA15TH PETITIONER

PERVINCE ONYANGO OGUTU16TH PETITIONER

PETER KAHENI17TH PETITIONER

PETER MWANGI GAKUU18TH PETITIONER

PHILIPS OWITI MINUDI19TH PETITIONER

RODA MBANDI KILONZI20TH PETITIONER

ROBERT KAMAU21ST PETITIONER

ROSE KAMBURA NJILU22ND PETITIONER

TOM OCHIENG23RD PETITIONER

MUTAVA XAVIER MASILA24TH PETITIONER

AND

HUMANIST INSTITUTE FOR CO-OPERATION

WITH DEVELOPING COUNTRIES (HIVOS).....1ST RESPONDENT

SNV NETHERLANDS DEVELOPMENT

ORGANIZATION IN KENYA.....2ND RESPONDENT

RULING

1. The 1ST Respondent filed a Notice of preliminary Objection to the Petition and application dated 20th March 2017 and filed on 29th March, 2017 to the effect that the suit be struck out or dismissed on the following grounds:-

i) The alleged dispute herein does not fall with the ambit of Section 12 of the Employment and Labour Relations court Act, (Chapter 234B of the Laws of Kenya);

ii) The issue raised in the instance proceedings are neither within the purview of employment and labour relations as contemplated by Article 162(2)(a) of the Constitution of Kenya nor do they fall under employer – employee relationship as contemplated under Section 12 of the Employment and Labour Relations Court Act, (Chapter 234B of the Laws of Kenya) by which reason this Honourable Court lacks jurisdiction to entertain this suit;

iii) The Orders sought in the application dated 20th March 2017 and Declarations in the Petition dated 20th March 2017 are misconceived and do not lie as against the 1st Respondent; for the 1st Respondent is not and has never been an employer of the Petitioners and there exists no employer-employee relationship.

iv) The entire claim/suit is therefore bad in law, untenable and in breach of the express provisions of Section 12 of the Employment and Labour Relations Court Act, (Chapter 234B of the Laws of Kenya) consequently this suit and/or claim ought to be dismissed with costs to 1st Respondent.

2. The 1st Respondent in addition filed an application on a certificate dated 17th May, 2017 challenging the jurisdiction of the court on grounds that the 1st Respondent has never been an employer of the Petitioners.

3. The application was responded to in a Replying Affidavit by George Nyamu sworn on 19th May, 2017 and filed on 22nd May, 2017.

Determination

4. The application dated 17th May, 2017 and the Preliminary Objection filed on 13th April, 2017 raises a point of law that may only be determined upon determining the question of fact, to wit who between the 1st and 2nd Respondents was the employer of the Petitioners.

5. The lengthy facts deposed to in the supporting affidavit to the application and the replying affidavit is testimony that the issues raised are not pure points of law and the Preliminary Objection and the application are only dilatory in nature and meant to delay the hearing and determination of the petition.

6. The essence of a Preliminary objection was given in **Mukhisa Biscuits Manufacturing Company Limited vs West End Distributors (1969) E.A 696** at page 700 per Sir Charles Newbold P and Law J A as follows:-

“A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration”

7. The judges added at page 701 as follows:-

“A preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any facts are to be ascertained or if what is sought is the exercise of judicial discretion”

8. The court has considered the pleadings and the submissions by the parties and is of the firm view that the objection is incapable of determination without first considering and determining a plethora of facts in dispute and in particular as to who between the 1st and 2nd Respondent is liable to pay the terminal benefits sought by the petitioners in this matter.

9. The matter raised in the preliminary objection and in the application is not a pure point of law. For the aforesaid reasons, the preliminary objection and the application dated 17th May, 2017 by the 1st Respondent are dismissed.

10. The parties are to take directions before the principal Judge in Nairobi for expeditious disposal of the petition since the submissions on record are limited to the Preliminary Objection and the application dated 17th May, 2017.

Dated and Signed in Kisumu this 21st day of March, 2018

Mathews N. Nduma

Judge

Delivered and signed in Nairobi this 6th day of April, 2018

Maureen Onyango

Judge

Appearances

Mr. Munyao, Kashindi & Muthama for Petitioners

Mr. Muthaura Mugambi Ayugi for the 1st Respondent

Mr Okongo Omogeni & Co. for the 2nd Respondent

Anne Njung'e – Court Clerk