



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1881 OF 2014**

**MUSYOKA MUTUA.....CLAIMANT**

**v**

**KENYA NATIONAL UNION OF**

**TEACHERS, MWALA BRANCH.....RESPONDENT**

**JUDGMENT**

1. Musyoka Mutua (Claimant) instituted legal proceedings against the Kenya National Union of Teachers, Mwala Branch (Respondent) on 24 October 2014 seeking refund of Kshs 67,400/- contributed to *Masaku Education Scheme*, which was run and operated by the Respondent, upon withdrawal of membership from the Scheme.
2. According to an affidavit of service filed in Court on 23 July 2015, the Respondent's Branch Secretary was served with Summons on 6 November 2014.
3. The Respondent did not file a Response.
4. On 17 October 2017, the Claimant served a hearing notice upon the firm of *L.N. Ngolya & Co. Advocates*.
5. The Court record does not have any record/document to show that the said firm filed a *Notice to Act* for the Respondent in this Cause as opposed to Machakos CMCC No. 1591 of 2010, *Musyoka Mutua v Kenya National Union of Teachers, Mwala Branch*.
6. The Cause was heard on 2 May 2015 when the Claimant testified.
7. The Court has considered the record, the pleadings and evidence placed before it.
8. Although the Claimant pleaded in the *Memorandum of Claim* that there was no other Suit or previous proceedings over the same subject matter, there is on record pleadings in Machakos Chief Magistrate Court Civil Case No. 1591 of 2010, *Musyoka Mutua v Kenya National Union of Teachers, Mwala Branch*, wherein the cause of action is refund of Kshs 67,400/-.
9. The Claimant did not make any reference to this prior Suit and what transpired to it during his testimony.
10. In the view of the Court that disclosure was relevant and material.
11. Considering that there was a prior Suit and that the Claimant did not make disclosure as to its status, the Court regrettably comes to the conclusion that this Cause is incompetent and an abuse of the court process.
12. If the Court were wrong on that conclusion, it would still have dismissed the Cause on the grounds that the Claimant failed to discharge the burden of proof expected of him.
13. The Court has reached that conclusion because the Claimant did not testify to or produce any contractual documents on the operations of the Scheme as to whether contributions could be refunded on withdrawal of membership.
14. Withdrawal of membership of a Scheme would not of itself entitle a member to refund of contributions.

15. Further, it is not clear and the Claimant did not remotely suggest that there was an employer/employee relationship between him and the Respondent or that the cause of action arose from a contract of service.

16. The Cause is dismissed with no order as to costs.

**Delivered, dated and signed in Nairobi on this 18<sup>th</sup> day of June 2018.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Mr. Munyao instructed by B.M. Mung'ata & Co. Advocates

Respondent did not participate

Court Assistant Lindsey