

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 457 OF 2016

BETWEEN

ALI ABUBAKR ALI CLAIMANT

VERSUS

CENTRAL ELECTRICAL INTERNATIONAL LIMITED ... RESPONDENT

RULING

1. The Claimant filed his Statement of Claim, on 14th June 2016. He states he was employed by the Respondent in the year 2009 as an Electrician. He avers his contract was terminated unfairly by the Respondent, on or about 30th August 2014. He prays for compensation and terminal benefits.

2. The Respondent filed its Statement of Response on 10th November 2016 denying to have terminated Claimant's contract unfairly. The Respondent also filed a Notice of Preliminary Objection on 22nd September 2017. The gist of the Objection is that the Claim is *res judicata*. The Amalgamated Union of Metal Workers filed Cause Number 148 of 2013 at Mombasa on behalf of its Members, against the Respondent herein. The Claimant was one of the Members on whose behalf the Cause Number 148 of 2013 was filed. This Cause was consolidated with Cause Number 430 of 2014 at Mombasa, and transferred to Nairobi, where it was registered as Cause Number 1618 of 2014. The Cause has not been heard. The Objection is based on the Affidavit of Mohammed Hamza, Respondent's Branch Manager. The Respondent submits that the Claim herein is therefore *res judicata*.

3. The Claimant submits that the Respondent has not established that the Claim is *res judicata*. It has not been shown that the Parties and Issues in the Claims are similar. Cause Number 148 of 2013 was filed in the year 2013. The Claimant states his dismissal occurred in 2014. The issues are not similar. The former Claim was about Recognition Agreement between the Union and the Respondent. The Pleadings under Cause Number 1618 of 2014 at Nairobi have not been displayed in the Respondent's Affidavit in support of Objection. There is no Order or Judgment showing the Court has made a determination on the same issues, between the same Parties.

The Court Finds:-

4. The Respondent has not established that the Claim herein is *res judicata*. There is no decision from any Court exhibited to the Court by the Respondent, showing that there is a binding and final determination made, relating to the same issues, between the Parties herein, or between the Parties' proxies. The Respondent states that the Claim in Nairobi is in the course of being heard. How then is the Claim *res judicata*, even assuming the Parties in the various Claims are the same or similar? There is no determination made on any issue by any Court.

5. The Memorandum of Claim in Cause Number 148 of 2013, at paragraph 4.5 lists the names of the Grievants on whose behalf the Claim was filed. The list does not include the Claimant's name. His Claim is based on termination of employment which took place in 2014. Cause Number 148 was filed before termination, in 2013. IT IS ORDERED:-

a) Preliminary Objection is rejected.

b) Parties to fix the Claim for substantive hearing.

c) Costs in the Cause.

Dated and delivered at Mombasa this 11th day of July, 2018.

James Rika

Judge