



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO. 825 OF 2014

KENYA UNION OF COMMERCIAL, FOOD

AND ALLIED WORKERS

CLAIMANT

v

W.E. TILLY LTD

1st RESPONDENT

JAY FISH LIMITED

2nd RESPONDENT

JUDGMENT

1. The Kenya Union of Commercial, Food & Allied Workers Union (the Union) instituted legal proceedings against W.E. Tilly Ltd & Jay Fish Ltd (Respondents) on 19 May 2014 and the Issue in Dispute was stated as

(1) Refusal to deduct and remit Union dues

(2) Refusal to sign recognition agreement.

2. Although served, the Respondents did not file a Response to the Cause.

3. The firm of Kaka Kamau & Co. Advocates however filed a Memorandum of Appearance on 28 May 2014.

4. On 16 June 2015, the Respondents proposed that the parties be allowed time to attempt out of court settlement but nothing came out of the attempt.

5. When the Cause came up for hearing on 3 May 2018, Mr. Kaka for the Respondent indicated that he was not able to proceed because the Respondents were no longer in operation.

6. The Union in response stated that it was not aware of the closure of the Respondents and urged that since no Response to the Memorandum of Claim had been filed, the Cause should proceed to formal proof.

7. The Court scheduled the Cause for hearing on 28 June 2018 and the Union called 1 witness.

8. The record indicated that attempts at conciliation by the Ministry of Labour were not fruitful and the Conciliator issued a certificate of unresolved dispute on 26 June 2012 paving way for the Union to lodge the dispute with the Court.

9. In the view of the Court it would serve no purpose to prepare a judgment if indeed the Respondents are no longer in operation.

10. In this regard, it is extremely regrettable that both parties in this dispute did not rise to the duty expected of them by making full disclosures which would have made the Court deal with the primary question of the legal and practical existence of the Respondents.

11. The Union could simply have called any of its members still in the employ of the Respondents.

12. The Court in this regard notes that the Form S attached to the Memorandum of Claim are all dated 2011 (about 7 years ago), a clear indication that the employment landscape could have changed drastically.

13. As for Mr. Kaka, records from the Registrar of Companies were only a click away.

14. Without material to determine the legal and practical existence of the Respondents, the Court has no option but to dismiss the Cause herein with liberty to the Union to commence fresh recruitment if it actually has members employed by the Respondents.

15. No order as to costs.

Delivered, dated and signed in Nairobi on this 30th day of October 2018.

Radido Stephen

Judge

Appearances

For Union Mr. Nyumba, Industrial Relations Officer

For Respondent Kaka Kamau & Co. Advocates

Court Assistant Stella