



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS

COURT AT NAIROBI

CAUSE NO. 678 OF 2018

(Before Hon. Lady Justice Hellen S. Wasilwa on 16th October, 2018)

TAILORS AND TEXTILES WORKERS UNION.....CLAIMANT

VERSUS

GLOBAL APPARELS EPZ LIMITED.....RESPONDENT

AND

FIDELIS OMWAMBA ONSONGO....1ST PROPOSED INTERESTED PARTY

FELIX ALUSIOLA LUYAKHA.....2ND PROPOSED INTERESTED PARTY

MOSES NYANGENA.....3RD PROPOSED INTERESTED PARTY

NZILANI MUSYOKI.....4TH PROPOSED INTERESTED PARTY

MARGRET KEMUNTO MAGARA..5TH PROPOSED INTERESTED PARTY

DUKE MASIRE NYAKINA.....6TH PROPOSED INTERESTED PARTY

JEREMIAH RAWINJI MIIKOBIA....7TH PROPOSED INTERESTED PARTY

RULING

1. The Application before the Court is the Interested Parties's Application dated 7th June, 2018, brought under the provisions of Article 19 (1), (2) and (3) of the Constitution of Kenya, 2010, Section 3 and 3A of the Civil Procedure Act, Order 1 Rule 10 (2) of the Civil Procedure Rules 2010 and all other enabling provisions of the law seeking for Orders:-

1. THAT this application be heard and determined before the hearing of the Notice of Motion dated 8th May, 2018.

2. THAT FIDELIS OMWAMBA ONSONGO, FELIX ALUSIOLA LUYAKHA, MOSES NYANGENA, NZILANI MUSYOKI, MARGRET KEMUNTO MAGARA, DUKE MASIRE NYAKINA, JEREMIAH RAWINJI MIIKOBIA on their own behalf and on behalf of 1644 Employees of Global Apparels EPZ Limited be granted leave to be enjoined as Interested Parties in this cause herein.

3. THAT necessary directions be given.

4. THAT the costs of the Application be provided for

2. The Application is premised on the grounds:-

1. THAT the proposed interested parties are employees of Global Apparel EPZ Limited (the Defendant herein) and seek to be enjoined in this suit on their own behalf and on behalf of all the 1644 employees of the defendant herein.

2. THAT the Notice of Motion dated 8th May 2018 in which the claimant seeks Orders that directly affect the proposed interested parties and all the 1644 employees of Global Apparels EPZ Limited in terms of deductions of union subscription fees is due for interparty hearing on the 12th June 2018.

3. THAT the proposed interested parties have a legitimate interest to be enjoined in this suit since the prayers and orders sought by the Plaintiff herein directly affect them.

4. THAT it is in the interest of justice that specific concerns relating to the employment of the proposed interested parties and all 1644 employees of Global Apparels EPZ Limited can be put in consideration before the suit is determined.

5. THAT the presence of the of the proposed interested parties before this Honourable Court is necessary to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the Claimant's Notice of Motion Application and Memorandum of Claim.

6. THAT the balance of convenience favours the granting the orders sought in this Application.

7. THAT the interest of justice will be met by the grant of the Orders sought.

3. The Application is also supported by the Affidavit of Fidelis Omwamba Onsongo, the 1st proposed interested party, wherein she states that she seeks to be enjoined in the suit on her own behalf and on behalf of 1644 employees of Global Apparels EPZ. She avers that the Claimant who is a stranger to her and 1643 other employees of Global Apparels EPZ Limited seek the Respondent to deduct monthly union dues equivalent to 2.5 % of their basic salary and therefore the Claimant's Application and suit have a direct implication on her and the other employees thus meriting this application.

4. She further avers that they never subscribed to be members of the 1st Claimant as they never signed any check of lists as alleged by the 1st Claimant and any purported signature on the said check off forms is forged as it does not belong to her.

5. It is also her contention that a total of 154 persons appearing on the check off forms have never been employees of Global Apparels EPZ and another 110 names have been repeated severally. For this reason, the Applicants seek for the application to be heard and determined before the Claimant's Notice of Motion dated 8th May, 2018, or else they stand to suffer irreversible harm.

6. She states that she together with 1644 others have an identifiable stake in the proceedings and the application ought to be allowed in the interest of justice.

7. The Application is opposed by the Affidavits of Rev, Joel Kandie Chebii, George Mwendwa Musyoka, Jackline Syombua and Alice Majhala Chanya wherein they collectively deny that consent was given to the Applicants to represent 1644 employees of the Respondent.

8. Rev. Joel Kandie Chebii in his replying affidavit states that some of the employees who have signed the authority to plead have sworn affidavits indicating that they never gave any authority to anyone to represent them in this suit.

9. That the 1st and 6th proposed interest parties do not have *locus standi* to be enjoined in the suit as they are supervisors and are therefore not unionisable. Furthermore, the 1st interested party is not directly affected by the matter as he has not given authority through check off forms and thus monthly deductions are not being effected against him. That the signatures on the check-off forms were entered freely by the employees who expressed interest.

10. That the Applicants have omitted to disclose in their application that a Recognition agreement and a CBA is in place between the Applicant and the Respondent.

11. In response to replication of names, the Respondent states that deductions are made once per month and this is should not be an issue for determination before the Court.

12. That despite the Respondent's refusal to deduct union dues, no employee has resigned from the Claimant and they have not received any withdrawal in writing.

13. George Mwendwa Musyoka avers that he freely accepted to be a member of the Tailors and Textiles Workers Union by writing and signing against his name on the check-off forms. That on 7th June, 2018, he was working at the Respondent when the Human Resource Manager one Godwin Shivachi approached employees with pre-printed forms similar to work attendance sheets bearing their names, card numbers, national identity card numbers with empty spaces to append signatures. That they were not informed as to the reason or intention of the employer in requiring them to sign the said forms.

14. He avers that he never gave authority to any person to represent him in Court in any representative suit. That his desired representation is the Claimant.

15. Similarly, Jackline Syombua and Alice Majhala Chanya aver that they of their own free will accepted to be members of the Claimant Union by wring their names on the check-off forms and signing against the names. That the signatures appearing on the authority to be represented by the Applicants are not theirs. That her desired representation is the Claimant Union.

16. In a rejoinder the 1st interested party states that he is the nominated chairman of the 1643 employees of the Respondent who gave their authority to plead on their behalf. That George Mwendwa Musyoka, Jackline Syombua and Alice Majhala Chanya spearheaded the process of obtaining the employees' signatures and he personally witnessed the said employees append their signatures in the authority to plead.

17. That no employee has objected to the authority to plead for being included therein unwillingly and in his view the Claimant and the deponents have colluded with the aforesaid employees to defeat the ends of justice.

18. He further states in his further affidavit that he was once a member of the Claimant Union but withdrew membership in 2015. He avers that the respondent is aware that he was appointed to the position of assistant shop steward and thus has locus standi.

19. That the Claimant union is not interested in representing the members' welfare and is only out to collect contributions from the Respondents' employees.

20. He further avers that in the absence of voluntary subscription by the Respondents' employees the CBA and Recognition Agreement is null and void *ab initio*.

Applicants' submissions

21. They submit that according to Black's Law Dictionary 9th Edition, page 1232 defines an Interested Party as:-

"A party who has a recognizable stake (and therefore standing) in the matter." It also defines a "Necessary Party" as "a party who being closely connected to a lawsuit should be included in the case if feasible but whose absence will not require dismissal of proceedings."

22. That an Interested Party is someone who is identified as being directly affected by the case (in particular, the relief that may or may not be granted by the Court depending on whether it finds for or against the Claimant). They rely on the case of **JUDICIAL SERVICE COMMISSION - VS - SPEAKER OF THE NATIONAL ASSEMBLY & ANOTHER (2013) eKLR** the Court, referring to the definition of an Interested Party under The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules as defined above stated that: -

"From the foregoing it is clear that an interested party ... is a person with an identifiable stake or legal interest in the proceedings hence may not be said to be wholly nonpartisan as he is likely to urge the court to make a determination favourable to his stake in the proceedings."

23. It is submitted that the Proposed Interested Parties have demonstrated a legal and identifiable interest in that should the claimant succeed in its prayer for the deduction of union fees by the Respondents, the same shall be deducted from the salaries of the proposed Interest Parties and other employees of the Respondent company and therefore the proposed Interested Parties shall be directly affected by the outcome of instant case. They urge the Court to allow the application.

24. I have examined all the averments and submissions of both Parties. I have looked at the Applicant's averments. The Applicants want to be enjoined in these proceedings because they do not wish to have their salary deducted for payment of union dues as sought in the Notice of Motion Application herein.

25. I note that the Interested Parties are seeing to say they do not wish to be party to orders this court may give because they are not members of the union.

26. The Labour Relations Act is very clear that every employee has a right to be a member of a union and be guided by the rules and regulations of that union. In the same vein, the right to be a member **consists** the right to cease being a member of a union.

27. All the Interested Parties if not satisfied with what the union is doing have a right to cease being members of the union but they cannot keep fighting the union from within.

28. In the case of **Banking, Insurance and Finance Union (Kenya) KCB (Kenya) Limited** Case No. 1619 of 2017, I rendered myself thus:-

"When an employee wishes to join union, the employee does so with the full knowledge that the trade union represents his interest. When the employee feels the union is not representing his interest, the honourable thing to do is to leave the union."

The Interested Parties position then that they want the Court to partially set aside the Court order obtained by the Union on behalf of its members including the Interested Parties herein, would be tantamount to saying that the union no longer represents them well and the honourable thing to do is to cease being members of the Claimant Union and join another.

The Claimant Union's right to collective bargaining and representing its members cannot be ceded to the Interested Parties who have a contrary view.

Section 4(1) of the Labour Relations Act provide as follows:-

(1) *“Every employee has the right to:*

(a) participate in forming a trade union or federation of trade unions;

(b) join a trade union; or

(c) leave a trade union”.

Under (c) above, the right the Interested Parties should exercise its discretion to leave the Claimant Union or else stay in and participate in its activities”.

29. It is therefore my finding that the Application sought by the Interested Parties is not tenable as its effect would be to divide the union and also render the exercise of its functions and duties unmanageable.

30. It is my finding that the Interested Parties interests if not being catered for by the union herein should resign as members of the union. In the circumstances, their application to be enjoined in this case is denied.

31. The main application to proceed for hearing.

Dated and delivered in open Court this 16th day of October, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Weru holding brief for Bonyo for Respondents – Present

Interested Parties – Absent

Claimants – Absent