



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAKURU

CAUSE NO.276 OF 2014

JEREMIAH LAPERE.....CLAIMANT

VERSUS

WILHAM (K) LIMITED.....RESPONDENT

RULING

The respondent, Wilham (K) Limited by application dated 8th June, 2018 and brought under the provisions of section 12 of the Industrial Court Act, sections 16 and 23 of the Industrial Court (Procedure) Rules, 2010 and sections 17 and 23 of the Employment and Labour Relations Court (Procedure) Rules, 2016 and seeking for orders that;

For the purpose of hearing and determination of this matter, the suit should be consolidated with the following suits from the same facts and therefore raise similar questions of fact and or law;

- i. ELRC No.261 of 2014 – Tabitha Njeri vs. Wilham Kenya Limited.*
- ii. ELRC No.264 of 2014 – Njenga Nyururu vs. Wilham Kenya Limited.*
- iii. ELRC No.268 of 2014 – Joseph Masindano vs. Wilham Kenya Limited.*
- iv. ELRC No.269 of 2014 – Lucia Wangui vs. Wilham Kenya Limited.*
- v. ELRC No.277 of 2014 – Kimalael Kimeto vs. Wilham Kenya Limited.*
- vi. ELRC No.278 of 2014 – Elmerida Barongo vs. Wilham Kenya Limited.*
- vii. ELRC No.275 of 2014 – Grace Njoki Muthui vs. Wilham Kenya Limited.*

All the suits/claims be struck out and or dismissed.

Costs be provided for.

The application is supported by the Annexed affidavit of Vitalis Osodo and on the grounds that all the claimants alleged to have been employed by the respondent, termination took effect at the same time and on the same conditions. The suits involve the same questions of facts and law and should be consolidated. This will enable the court move expeditiously.

The court heard and dismissed Cause No.262 of 2014 – Peter Kariuki versus Wilham Kenya Limited which raised similar questions of facts and law and similar orders ought to issue herein.

The claimants through Realign Affidavit of Steve Odhiambo Opar, advocate for the claimant oppose the application and avers that as counsel for claimants in Causes Numbers 261, 264, 268, 269, 277, 278, and 275 all of 2014 he has authority to respond herein.

The application by the respondent is in abuse of court process and filed with inordinate delay.

Even though all the claimants were in the employment on the respondent, each was unfairly terminated in employment and the causes of action and remedies sought are different.

Cause No.375 of 2014 where the claimant was wrongfully terminated in her employment by the respondent on account of redundancy unlike the other suits. In other suits set out by the respondent, there are joint respondents unlike the others. The designation of the claimant and their dates of employment in ELRC No.261, 264, 268, 269, 277, 278 and 275 all of 2014 are different.

In causes Numbers, 261, 264, 268, 269, 277, 278 and 275 all of 2014 the claimants resigned from their employment and gave sufficient notices before suits were filed. The claimants seek payment of terminal dues which the respondents have failed to pay.

The claimant in Cause No.375 of 2014 relates to non-payment of terminal dues following a declaration of redundancy such suit is different from the other suits.

In Cause No.262 of 2014 Peter Kariuki versus Wilham Kenya Limited was dismissed on the reasons given by the court and such cannot form precedent to strike out other claims.

Orders sought should not issue and each case should be heard on its merits.

Both parties made their oral submissions in court.

Determination

Before addressing the issues which emerge herein, though no party addressed it, the respondent in filing and addressing its application has relied on the provisions of section 12 of the Industrial Court Act, sections 16 and 23 of the Industrial Court (Procedure) Rules, 2010 and sections 17 and 23 of the Employment and Labour Relations Court (Procedure) Rules, 2016. This is a misadventure.

Industrial Court Act, 2010 [2011] has since been repealed. Equally the rules thereto, the *Industrial Court (Procedure) Rules, 2010 [2011]*, have equally been repealed. Such a law and rules do not exist.

In 2016, Parliament passed the Employment and Labour Relations Court Act, 2011 and the Employment and Labour Relations Court (Procedure) Rules, 2016 (The Rules). Such is the law which constitute the court and the Rules which apply with regard to proceedings before the court.

On the substantive issues raised by the respondent as the applicant, consolidation of suits is regulated under the provisions of Rule 23 of the Court Rules and the filing of a test suit regulated under Rule 24.

In the consolidation of suits there must be some common question of fact or law addressed or that it is practical and appropriate to proceed with the issues raised in the suits simultaneously. While in a test suit, there must be two or more persons who have instituted suits against the same respondents and;

... the Court may on either on its own motion or upon the application of any of the parties with notice to all the affected parties, if satisfied that the issues to be tried in each suit are similar, make an order directing that one of the suits be tried as a test case, and staying all the steps in the other suits until the selected suit is determined, or fails to be a real trial of the issues.

Then a Consolidation or a test suit may be allowed.

Such consolidation and filing of a test suit must be addressed without inordinate delay to enable the court appreciate the subsisting facts and direct as appropriate. To delay the filing of such application or the failure to bring such matters to the attention of the court from the onset make it impossible in the midst of on-going hearings to order as appropriate.

In this regard, the claimant filed their various claims in the year 2014.

Some suits have concluded and other are pending.

The respondent submitted that there was Cause No.262 of 2014 – Peter Kariuki versus Wilham Kenya Limited which has since concluded. There is also Cause No.375 of 2014 – Grace Njoki Muthui versus Wilham Kenya Limited & another which has also progressed separately from the other claims.

Were the respondent was aware of proceeding sin Cause No.262 of 2014 and Cause No.375 of 2014 and failed to act as appropriate, to move the court now in view of on-going suits would defeat the cause of justice to consolidate all the claims without taking all facts into account.

The consolidation of suits as set out above is for the multiple purpose of addressing a common question of fact or law addressed or that it is practical and appropriate to proceed with the issues raised in the suits simultaneously. Such matters can be addressed singly on their merits though the practicality of it would take longer. Such is a matter that the respondent as the applicant herein ought to have put into account way back in the year 2014 or soon thereafter.

In this regard, and noting objections made by the claimant that the suits raise different facts, they relate to other respondents and that the remedies sought are different, each case shall be heard on its merits.

Accordingly, application dated 8th June, 2018 is declined. Costs to the claimant.

Dated and delivered at Nakuru this 11th day of October, 2018.

M. MBARU

JUDGE

In the presence of:

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