



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 2028 OF 2017

(Before Hon. Justice Hellen S. Wasilwa on 8th October, 2018)

PUBLIC TRANSPORT OPERATORS

WORKERS UNION OF KENYACLAIMANT

-VERSUS-

ARAMEX KENYA LIMITED1ST RESPONDENT

CABINET SECRETARY, MINISTRY OF EAST AFRICA,

LABOUR & SOCIAL PROTECTION2ND RESPONDENT

TRANSPORT WORKERS UNIONSINTERESTED PARTY

RULING

1. The Application before Court is a Preliminary Objection raised by the Interested Party herein dated 28/2/2018 and filed in Court on 1/3/2018 on the following grounds:-

1. That the Application before the Honourable Court is fraudulently as the purported claimant – “Public Transport Operators Workers Union – Kenya” is not registered as such from the records of the Registrar of Trade Unions.

2. That, the Claimant herein is a non-registered entity, which cannot sue on its behalf and lacks the requisite locus standi to file/institute and sustain any application in law.

3. That, further to the above, the Application as filed is technically dead and has no legs to stand on as it contravenes the express Provisions of Section 4 of the Employment and Labour Relations Court (Procedure) Rules, 20167; which stipulates that”a party who wishes to refer a dispute to the Court under any written Law SHALL file a Statement of Claim – (Memorandum of Claim) setting out ... (1) (a) to (f); and (g) the relief sought...”.

4. That, the Application before this Honourable Court by the Claimant lacks the said “Statement of Claim” and has no any relief sought for; and as such, it is a waste of the Honourable Court’s time and should not be entertained any further.

2. The 2nd Respondent raised Grounds Opposition to the application raising the issues of misjoinder and averring that they ought to be excused from the proceedings as their work is limited to obeying a Court order.

3. The Claimant responded to this Preliminary Objection by filing their Reply thereto. They submitted that they are duly registered and attached their Certificate of Registration to this reply.

4. I have considered submissions of both Parties. I note that the issues being raised by the Interested Party in their Preliminary Objection are issues of fact which defeat the principles governing the raising of a Preliminary Objection. In **Mukhisa Biscuit case**, it has been established that a Preliminary Objection should not be raised if the matter to be proved would require further evidence for it to be established.

5. It is my finding that issues of the correct name for the Claimant and whether the Claimant is registered would require further evidence. I

find that the Preliminary Objection is not merited and I dismiss it accordingly.

6. Costs in the cause.

Dated and delivered in open Court this 8th day of October, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Parties