



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT**  
**NAKURU**  
**CAUSE NO.222 OF 2018**

**KENYA PLANTATION & AGRICULTURAL  
WORKERS UNION.....CLAIMANT**

**VERSUS**

**THE HON. CABINET SECRETARY,  
LABOUR & SOCIAL PROTECTION.....1<sup>ST</sup> RESPONDENT**  
**KENYA EXPORT FLORICULTURE,  
HORTICULTURE & ALLIED WORKERS UNION.....2<sup>ND</sup> RESPONDENT**

**RULING**

The ruling herein relates to preliminary matters raised by the 2<sup>nd</sup> respondent, Kenya Export Floriculture, Horticulture & Allied Workers Union with regard to the court jurisdiction to hear the claimant's case and vide Grounds of Opposition filed on 30<sup>th</sup> July, 2018 that;

*This court lacks jurisdiction to hear the application and the entire suit was filed by the claimant.*

*The court is functus officio on matters raised in both the application and main suit.*

Both parties attended and made oral arguments.

The 2<sup>nd</sup> respondent's case is that in the application by the claimant dated 16<sup>th</sup> July, 2018 at paragraphs 10 and 11 there is admission that the claimant is aware that there is a petition before the Supreme Court being Petition No.4 of 2018 **Kenya Plantation & Agricultural Workers Union versus Kenya Export Floriculture Horticulture & Allied Workers Union** and which petition addresses the question of the registration of the 2<sup>nd</sup> respondent. the claim herein is On the basis that Gazette Notice No.95 and Legal Notice No.157 of the Labour Relations Act allow the 2<sup>nd</sup> respondent to commence deduction of union dues which will prejudice the claimant and which matters are well before the Supreme Court and thus this court lacks jurisdiction to hear the claim or issue orders. The matters before the Supreme Court have already been adjudged by this court and progressed to the Court of Appeal and now parties are before the Supreme Court and this court must now stop and allow the Supreme Court to proceed.

The 2<sup>nd</sup> respondent further avers that in Employment and Labour Appeal No.7 of 2011, this court delivered judgement and can therefore not revisit the same issues as before it while the matters between the parties have since progressed to the Supreme Court in Petition No.4 of 2018. This court lacks jurisdiction to hear the claim.

The claimant has also filed Cause No.13 of 2018 (Nakuru) seeking similar orders as herein and where it was necessary to file any application; the claimant ought to have moved under such cause. This is in essence abuse of court process. The 2<sup>nd</sup> respondent relied on the case of **Alvin Kamande Njenga versus Justice Gacheru, HCCC Misc. Appl. No.86 of 2016**.

The claimant submitted that under Article 162(2) (a) of the constitution read together with section 12(1) (d) of the Employment and Labour Relations Court Act this court has jurisdiction to hear the Memorandum of Claim herein. Under Rule 17(5) of the Employment and Labour Relations Court (Procedure) Rules, 2016 the court has power to issue interim orders as applied for by the claimant.

The questions addressed in this claim relates to Gazette Notice of 13<sup>th</sup> June, 2018 issued by the 1<sup>st</sup> respondent following application by the 2<sup>nd</sup> respondent under section 48 of the Labour Relations Act, 2007 and thus the two respondents are necessary parties herein. The facts before court are not similar to those in other suits between the claimant and 2<sup>nd</sup> respondent in Petition No.4 of 2018 before the Supreme Court and in Cause No.13 of 2018 (Nakuru). The case authority cited by the 2<sup>nd</sup> respondent is irrelevant herein and should be ignored.

Indeed a court cannot move without jurisdiction. By jurisdiction, this means there must be authority conferred to the court by the constitution or statute to address matters before it as held in **Owners of Motor Vessel "Lilian S" versus Caltex Oil (Kenya) Limited [1989] KLR**. As such, the question of jurisdiction once raised by a party or by the court on its own motion must be addressed immediately based on the evidence before the court.

On 16<sup>th</sup> July, 2018 the claimant filed a Notice of Motion and Memorandum of Claim on equal date. The issue in dispute in the Memorandum of Claim is that;

*Gazette Notice No.157 of the Labour Relations Act, No 14 of 2007 dated 13<sup>th</sup> June 2018 citing Kenya Export Floriculture, Horticulture & Allied Workers Union deduction of Union Dues order, 2018.*

The prayers in the Memorandum of Claim are that judgement be issued against the respondents for:

*A permanent injunction be and is hereby issued prohibiting and/or restraining the 1<sup>st</sup> and 2<sup>nd</sup> respondents by themselves, their servants, agents or anyone claiming through them from demanding, compelling and/or requiring any employer or employee to deduct trade union dues and or implementing*

*Gazette Notice No.157 dated 13<sup>th</sup> June, 2018 of the Labour Relations Act, No 14 of 2014 citing Kenya Export Floriculture, Horticulture 7 Allied Workers Union deduction of union dues order, 2018.*

*A declaration be and is hereby issued suspending/setting aside and or implementing Gazette Notice No 157 dated June 2018 of the Labour Relations Act, No 14 of 2007 citing Kenya Export Floriculture, Horticulture 7 Allied Workers Union deduction of union dues order, 2018.*

Under paragraph 2 of the Memorandum of Claim the claimant avers that on 13<sup>th</sup> June, 2018 the 1<sup>st</sup> respondent published in the Kenya gazette Notice No.157 under the Labour Relations Act, 2007 and requiring employers to deduct trade union dues from employees the same to the 2<sup>nd</sup> respondent union and being aggrieved by such orders the claimant moved the court for restraining orders. Such orders are premised on father facts that the 1<sup>st</sup> respondent Notice was issued following application by the 2<sup>nd</sup> respondent in terms of section 48(2) of the Labour Reactions Act, 2007 while the 2<sup>nd</sup> respondent failed to disclose material facts that that they were aware claims filed with the court;

**Cause No.402 of 2017 Kenya Export Floriculture, Horticulture & Allied Workers Union versus Shalimar Flowers & 2 Others;**

**Cause No. 171 of 2014 Kenya Export Floriculture, Horticulture & Allied Workers versus Maridadi Flowers Ltd & 2 others.**

The claimant also discloses at paragraph 7 of the Memorandum of Claim that there is Cause No.13 of 2018, Kenya Plantation & Agricultural Workers Union versus **Kenya Export Floriculture, Horticulture & Allied Workers** filed by the claimant following the 2<sup>nd</sup> respondent obtaining orders under Legal Notice No.95 Notice 157 under the Labour Relations Act, 2007 for deduction of trade union dues and which is pending herein.

Under paragraph 8 of the Memorandum of Claim the claimant avers that there is Petition No.4 of 2018 before the Supreme Court following their appeal by the Court of Appeal on matter relating to the registration of the 2<sup>nd</sup> respondent.

Effectively, the cause of action herein relates to the 1<sup>st</sup> respondents Notice published on 13<sup>th</sup> June, 2018 in terms of section 48 of the Labour Relations Act, 2007 and which the claimant is challenging in view of the application by the 2<sup>nd</sup> respondent to have trade union dues deducted and remitted to them. where such publication by the 1<sup>st</sup> respondent took effect on the date of publication, 13<sup>th</sup> June, 2018 and the claimant felt its rights were infringed upon, this being a matter relating to employment and labour relations, the forum to urge the protection of such rights and interests is conferred to this court under section 12 of the Employment and Labour Relations Court Act, 2011. Such cause of action cannot have arisen when the petition before the Supreme Court under Petition No.4 of 2018 was filed and relating to matters between the 2<sup>nd</sup> respondent and the claimant following a judgement of the Court of Appeal and Employment Appeal No.7 of 2011 from this court.

Even where the court has addressed matters between the claimant and 2<sup>nd</sup> respondent or the respondents with regard to registration, employment and labour relations in Employment Appeal No.7 of 2011, the cause of action therein did not relate to the publication of Gazette Notice published by the 1<sup>st</sup> respondent on 13<sup>th</sup> June, 2018 as such matters as therein must be now addressed on their merits.

Where the 1<sup>st</sup> respondent has published a Gazette Notice of 13<sup>th</sup> June, 2018 and new facts arise from therein, the claimant cannot be stopped from urging its case. This court cannot be denied jurisdiction over such a matter as this is the only forum under the constitution for the parties to assert their rights and based on the questions to be addressed by the parties, the court must be and adjudge. Equally the court cannot be held to act *factus officio* over a matter with new facts and grounds even where the parties before the court may be similar as in Causes No.13 of 2018 of in Employment Appeal No.7 of 2011.

Despite the 1<sup>st</sup> respondent not having entered appearance, the rationale of Gazette Notice No.157 published on 13<sup>th</sup> June, 2018 and the claims made therefrom by the claimant must be addressed on their merits. It would facilitate the course of justice for the respondents to file their respective Responses to the claims made for the court to hear each party and make a finding.

**In conclusion therefore, the objections made by the 2<sup>nd</sup> respondent with regard to the court jurisdiction and that the court is *functus officio* are without merit and are hereby dismissed. Costs to the claimant.**

**Dated and delivered at Nakuru this 3<sup>rd</sup> day of October, 2018.**

**M. MBARU JUDGE**

In the presence of:

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