



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 1682 OF 2015

PETER WACHIRA WAITHANJI.....CLAIMANT

VS

RAGOS TRADING COMPANY LIMITED.....RESPONDENT

RULING

1. This ruling proceeds from the Claimant's application dated 21st April 2016 seeking the following orders:

- a. That this case be consolidated with Cause No 1676 of 2015: Martin Vodongo v Ragos Trading Co Limited and Cause No 1679 of 2015: Zablon Kariuki Kahura v Ragos Trading Co Limited;
- b. That this case be selected as a test suit on the questions of unlawful and unfair dismissal from employment and non-payment of terminal dues;
- c. That all the cases do abide by the Court's finding in this case on the question of unlawful and unfair dismissal from employment and hence do proceed thereafter on the questions of non-payment of terminal dues and assessment of damages only;
- d. That the costs of this application be in the cause.

2. The application which is supported by the affidavit of Namada Simoni, Advocate is based on the following grounds:

- a. That all the Claimants were employees in the same company;
- b. That the questions of unlawful and unfair dismissal are common to all the cases;
- c. That the prayers herein will save judicial time and speed up the conclusion of the cases.

3. In a replying affidavit sworn by Alfred Nyandieka, Advocate in opposition to the application, it is deponed that the causes of action and/or defences are not the same in that:

- a. The acts of poor performance and misconduct by the Claimants were committed separately and differently;
- b. Some of the acts of misconduct are unique to particular cases, for example in the case of Peter Wachira Waithanji which involved forgery and uttering a false document;

c. The Claimants' responses to the acts of misconduct are different, whereas some admitted and apologized others did not;

d. The Claimants' responses to the notices to show cause and disciplinary procedures were not uniform, whereas Martin Vodongo replied, the rest did not reply.

4. Counsel further depones that the mode of termination was not the same in all the three cases. Whereas Peter Wachira and Zablon Kariuki were summarily dismissed, Martin Vodongo had a normal termination upon payment of terminal dues.

5. Counsel goes on to state that the witnesses in the three cases are not the same save for one witness who may appear in two cases. The others to be called are witnesses to the various incidences of poor performance and misconduct which occurred at different times and places, each being unique in its own way.

6. Rules 24 and 25 of the Employment and Labour Relations Court (Procedure Rules), 2016 provide as follows:

24. The Court may consolidate suits if it appears that in any number of suits-

(a) Some common questions of facts or law arise; or

(b) It is practical and appropriate to proceed with the issues raised in the suits simultaneously.

25. Where two or more persons have instituted suits against the same respondents, the Court may, either on its own motion or upon 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 steps in the other suits until the selected suit is determined, or fails to be a real trial of the issues.

7. I have looked at the Memoranda of Reply and Counterclaims filed by the Respondent in each of the cases sought to be consolidated and find that the circumstances giving rise to the respective causes of action are different.

8. It seems to me therefore that each Claimant would be required to prove their individual case as provided under Section 47(5) of the Employment Act, 2007. Additionally each Claimant would need to respond to the respective counterclaims filed against them by the Respondent.

9. That being the case, I find that this is not an appropriate case for consolidation. The claimants' application dated 21st April 2016 therefore fails and is dismissed.

10. The costs of the application will be in the cause.

11. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 13TH DAY OF JANUARY 2017

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JUDGE

Appearance:

Mr. Wathome for the Claimants

Mr. Nyandieka for the Respondent