



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 395 OF 2015
TRANSPORT WORKERS UNION (K).....CLAIMANT
VERSUS
KIMILILI HAULIERS CO. LTD
RIFT PETROLEUM LTD
FIMS LTD.....RESPONDENTS

JUDGMENT

1. Transport Workers Union (K), (the Union) alleges through a Memorandum of Claim lodged with the Court on 11 December 2015 that the Respondents (related companies) gave a verbal notice to declare redundancies of those of their employees who had joined it (the Union).
2. The Union also contended that despite entering into a recognition agreement with the Respondents, they had declined to negotiate a collective bargaining agreement.
3. The Union filed together with the Memorandum of Claim a motion under certificate of urgency seeking to stop the intended redundancies and restraining the Respondents from harassing or intimidating the Union's members (the motion was dismissed in a ruling rendered on 26 February 2016).
4. The Respondents filed a Reply to Memorandum of Claim and also raised a preliminary objection to the Cause asserting *res judicata* and non-compliance with the provisions of the Labour Relations Act and the Employment Act.
5. The Cause was heard on 23 November 2016. The parties opted not to tender any witnesses but relied on the record and oral submissions made in Court.
6. The Court has considered the material placed before it and the oral submissions.
7. The parties have a recognition agreement entered into on 14 November 2014. The recognition agreement has set out dispute resolution procedures in cases of both individual and collective grievances.
8. The dispute presented to Court relates to intended redundancy(ies) which squarely fall under clause 3.0(c) and (d) of the recognition agreement as read with clause 2.0(a) of the same agreement.
9. There is a letter dated 2 July 2015 from the Ministry of Labour accepting a dispute in relation to Refusal to negotiate the CBA and failure to issue the statutory employment particulars to the employees, but there is nothing presented by the Union to show that the dispute was concluded either as a resolved or

unresolved dispute.

10. In other words there is no certificate of unresolved dispute or minutes of the conciliation as required by the Rules of this Court. The Cause was filed prematurely.

11. As regards *intended declaration of redundancy(ies)*, there is absolutely nothing to suggest that the dispute was referred to the Negotiation Committee or the Cabinet Secretary.

12. What has been presented was a dispute relating to the *unfair termination* of some 6 employees and which dispute was accepted by the Cabinet Secretary on 5 November 2016.

13. This dispute by the stretch of the imagination cannot relate to an *intended redundancy* because as of the date of reporting the dispute, the named employees had already been terminated.

14. Nothing could have been easier than for the Union to challenge the terminations as unfair.

15. In the view of the Court, the dispute presented for the determination of the Court is not only lacking in merit but is incompetent as the mutually agreed dispute resolution mechanisms had not been exhausted.

16. It also appears that the Union mixed causes of action which ought not have been litigated in one suit.

17. The effect of the foregoing is that the Court dismisses the Cause herein with costs to the Respondent.

Delivered, dated and signed in Nakuru on this 24th day of February 2017.

Radido Stephen

Judge

Appearances

For Union	Mr. Beru, Branch Secretary, Transport Workers Union (K)
For Respondents	Mr. Oribu instructed by Omwenga & Co. Advocates
Court Assistants	Nixon/Daisy