



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT
OF KENYA AT NAIROBI
CAUSE NO. 1377 OF 2016

(Before Hon. Lady Justice Hellen S. Wasilwa on 21st February 2017)

**KENYA SHIPPING CLEARING AND
WAREHOUSES WORKERS UNIONCLAIMANT**

VERSUS

RAPID KATE SERVICES LIMITED..... 1ST RESPONDENT

TRANSPORT WORKERS UNION (K).....2ND RESPONDENT

RULING

1. What is coming up is a Preliminary Objection dated 20th July 2016 where the 1st Respondent raises objection on a point of law that the entire suit and the application filed herein are both incompetent and an abuse of the Court process pursuant to the provisions of Section 7 of the Civil Procedure Act (CAP 21 of the Laws of Kenya) and Article 50 of the Constitution of Kenya being *sub-judice* and *res-judicata*.
2. The matter proceeded by way of open Court submissions.
3. The Respondents submitted that the matter is no longer *sub judice* as judgment was entered in ELRC Cause no 813 of 2016 delivered on the 23rd of September 2016 by Ndolo J in favour of the 2nd Respondent and the CBA has been registered. On the face of the Court, there are 4 prayers in the claim which have also been awarded in 813 of 2016.
4. The Applicants submitted that a Preliminary Objection on grounds that the 1st and 2nd Respondents entered a CBA which they brought to Court for registration and they opposed the same. There had been a dispute as to how union dues were deducted to the 2nd Respondent, the issues in 813 of 2016 are not the same and the 2nd Respondent was not a party to the dispute.
5. They submit that their claim is on Claimants dues and not on CBA as in 813 of 2016.
6. Having considered the application and submissions before me, I note that in Cause 813/2016, the issues were on Union Membership and registration of a CBA. The parties were ordered to negotiate and submit a CBA for registration.

7. In the current claim, the issue revolve around refusal by 1st Respondent from reviewing a CBA negotiation as recommended by Cabinet Secretary for Labour.

8. The parties in the 2 claims seem to be the same only that their positions change. J. Ndolo ordered parties to negotiate and submit a CBA for registration. Any party not satisfied should go before her for further directions.

9. I agree that this matter is *subjudice* and should be canvassed with Cause 813/2016 through an application. This suit is therefore struck out for being *subjudice*.

Read in open Court this 21st day of February, 2017.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Miss Ouma holding brief for Miss Githii for 1st Respondent

Ndege for 2nd Respondent – Present

Nyongena for Claimant – Present