



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CAUSE NO. 9 OF 2016**

**(Formerly Nairobi file No. 1055 of 2014)**

*(Before Hon. Lady Justice Maureen Onyango)*

**KENYA NATIONAL PRIVATE SECURITY WORKERS UNION.....CLAIMANT**

**-Versus-**

**MODERN SECURITY HOLDING..... RESPONDENT**

**J U D G E M E N T**

By a Memorandum of Claim filed in court on 24th June 2014 the Claimant Union states that it is a registered trade union and has filed the suit on behalf of its member PAMELA ACHIENG MIRUKA herein after referred to as the Grievant.

The Claimant avers that the grievant was employed by the Respondent on or about 21st September, 2005 as a Senior Clerk at a salary of Shs.6,500 per month. She served the Respondent until on or about 27th March 2014 when she saw her name in an advertised circular of employees whose services had been terminated.

The Claimant prayed for payment of arrears of salary and house allowance from January to June, 2014.

The Respondent filed a defence on 24th July 2014 in which it denied all the averments in the Memorandum of Claim and Counter-Claims for return of company property such as chairs, tables and computers taken by the Claimant. The Respondent further states that the Claimant was not an employee but a director of the company, that she registered a rival company by the name Modern Radar Group Limited and transferred the Respondent's clients to that company. That she further converted some employees of the Respondent to work at the new company. The Respondent prays that the claim be dismissed.

The case was heard on 3rd October 2016 in the absence of the Respondent after the court was satisfied that the Respondent was properly served.

The claimant testified that she started working for the Respondent on 1st October 2005 as a secretary at Modern Security Holdings Limited Kisumu Office. She worked up to 17th March 2014 in the same capacity. She testified that on 2nd January 2014 she was appointed by the Managing Director Mr. James Michael Mctough to become a director of the company, and manage the company on his behalf. She was appointed with 5 others being SAMSON ONYANGO ODUOR, MARY AWUOR RANGARA, ABEL OOKO MUMBO. MAXWELL OTIENO AUKA and LEAKEY ONYANGO OKEYO. She testified that the Managing Director instructed them to change the name of the company. Later Abel and Leakey left

the company. Pamela and Maxwell were to run the Kisumu and Eldoret Offices while Mary and Simon were to run Nakuru Office.

The Grievant testified that they complied with the instructions to change the name of the company. She testified that when she reported to work on 2nd January 2014 she was informed by the supervisor on duty that Mary, Maxwell and Simon were distributing letters to clients informing them of change of name.

She testified that she called the Managing Director and reported what was happening and the Managing Director instructed her to also write letters to clients informing them of change of name, which she did. She testified that after that there were wrangles among the directors. Her co-directors incited workers and guards against her which forced her to pull out of office. While away she learnt that the co-directors had written a circular to clients dated 27th March 2014 stating that she and several other workers were no longer employees of the company. That it is that circular which she considered to have terminated her services.

She prayed for judgment as prayed in the memorandum of claim.

### **Determination**

According to section 62 of the Labour Relations Act, all trade disputes involving trade unions are supposed to be first reported to the Minister for Labour for compulsory statutory conciliation. A dispute is only referred to court after conciliation process has failed and the conciliator has issued a certificate to that effect as provided in section 69 of the Labour Relations Act. The only disputes that trade unions can file without first reporting to the minister for labour are disputes filed under certificate of urgency as provided in section 74 and 77. Such disputes are those relating to recognition, redundancy/retrenchment, disputes involving essential services and disputes on strikes and lockouts.

In the present case, the claimant has not stated whether or not this dispute was reported to the labour office. It has also not stated whether or not the grievant was a member of a union.

In her testimony the Grievant stated that at the time of leaving employment she was a director. Directors are not unionisable employees and cannot become union members. Directors may not even qualify to be considered as employees unless their appointment letters confirm that they are employees.

The Claimant prayed for the following order -

- a) That this honourable court be pleased to order the respondent pay all salary arrears since January up to date.
- b) That the respondent be restrained from harassing and stop physical threats towards the grievant.
- c) That all arrears on house allowance and the worked over times be paid immediately.
- d) That cost be provided for.

However in her testimony she stated that she decided to pull out due to wrangles among directors. She has therefore not proved that she was terminated from service. The letter she refers to dated 27th March 2014 was written after she had pulled out according to her testimony. It is not a letter of termination but only informs clients that she was no longer an employee of the Respondent. The prayers in the memorandum of claim are also vague and cannot be granted as framed.

I have considered both the defence and written submissions filed on behalf of the Respondent and they do not add value to the case. Both defence and written submissions are written by a person who does not appear to understand what either a defence or written submissions mean. Both of them however point to the fact that the grievant was a director of the Respondent and left the services of the Respondent after disagreements among the directors.

The foregoing being the case, I find that the Claimant has not made out a case against the Respondent capable of adjudication by this court. I further find that the Grievant was not a member of the Claimant union and the union therefore had no locus standi to file suit on her behalf.

I further find that the claim was brought to court irregularly as the claimant union did not comply with the mandatory procedure for reporting disputes under the Labour Relations Act.

The result is that the suit is dismissed.

**DATED SIGNED AND DELIVERED THIS 9TH DAY OF FEBRUARY, 2017**

**MAUREEN ONYANGO**

**JUDGE**