



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 463 OF 2016

BETWEEN

**BAKERY CONFECTIONERY FOOD MANUFACTURING &
ALLIED WORKERS UNION (K).....CLAIMANT**

VERSUS

TSS GRAIN MILLERS LIMITED.....RESPONDENT

RULING

1. The Respondent seeks to have the Claim struck out, relying on 2 grounds. First, the Respondent is under administration. Legal process initiated without the approval of the Court, or that of the Administrator, is a nullity. Second, the Claimant made a report to the Cabinet Secretary, Ministry of Labour, on 27th May 2016, under Section 62 of the Labour Relations Act No. 14 of 2007. Conciliation process has not been exhausted.

2. The Application was heard on 14th March 2017.

The Court Finds:-

3. The Claimant made a report on the presence of a trade dispute between the Parties. Report was made to the relevant Cabinet Secretary, on 27th May 2016, under Section 62 of the Labour Relations Act.

4. The process under Section 62 of the Labour Relations Act has neither been pursued, nor exhausted.

5. The Claim was filed in disregard of Section 62 above, and Clause 3 of the Parties' Collective Bargaining Agreement dated 28th May 2009.

6. The Court agrees entirely with the Respondent that the Claim was filed in disregard of Rule 6 of The Industrial Court (Procedure) Rules 2010 (currently Rule 5 of the Employment and Labour Relations Court (Procedure) Rules, 2016.

7. There is considerable merit in the Respondent's argument on the effect of the Respondent being insolvent.

8. The Claim in its current form, is not sustainable.

IT IS ORDERED:-

a) The Claim is hereby struck out without prejudice to the Claimant's right to file a fresh Claim, upon correcting the defects pointed out by the Respondent.

b) No order on the costs.

Dated and delivered at Mombasa this 31st day of March 2017.

James Rika

Judge