



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**  
**AT NAIROBI**  
**CAUSE NO.773 OF 2017**

**RICHARD BOSIRE.....1<sup>ST</sup> CLAIMANT**  
**LEONIDAH KERUBO.....2<sup>ND</sup> CLAIMANT**  
**JANE WAMBUI.....3<sup>RD</sup> CLAIMANT**  
**FERDINARD G MBECHE.....4<sup>TH</sup> CLAIMANT**  
**MALOPA WEKESA.....5<sup>TH</sup> CLAIMANT**

(Suing as the officials and members of Universities

Academic Staff Union, University of Nairobi Chapter)

**VERSUS**

**UNIVERSITIES ACADEMIC STAFF UNION.....RESPONDENT**

**RULING**

The herein relates to the Notice of Preliminary Objections filed by the respondent dated 5<sup>th</sup> May, 2017 on the grounds that;

- 1. The claimants do not have locus standi to institute this suit in their capacities in the absence of a resolution being passed by the Executive Committee University of Nairobi Chapter as any suit must be brought in the names of the respondent's national officials or in the names of the Universities Academic Staff Union.*
- 2. The claimants do not have locus sandi to institute this suit in their capacities in the absence of a resolution being passed by the executive committee, University of Nairobi Chapter. As such the current suit is not brought by UASU, University of Nairobi but in individual capacity of the claimants who have no locus standi to so do.*
- 3. Section 21 of the Labour Relations Act only gives the respondent corporate capacity to sue in its own name but not the claimants which is a branch of the respondent.*
- 4. The claimants have not exhausted the internal dispute resolution mechanisms of the respondent prior to instituting this suit as provided in its constitution. Having failed to do so, the claimants'*

*application dated 25<sup>th</sup> April, 2007 and the entire suit is premature and vexatious.*

*5. This suit offends section 2 of the Labour Relations Act which defines the Union secretary general as the authorised representative of the union. None of the claimants is the secretary general of either the National Union of the Chapter.*

*6. The orders sought violate section 48 of the Labour Relations Act which requires union dues to be remitted to the Respondent's designated account. It violates the Legal Gazette Notice No. 38 and it also violates the respondent's own constitution.*

*7. The application is fatally defective and incompetent as the prayers sought are incapable of being granted in this manner save for in a judicial review application.*

Each party made oral submissions.

The respondent submitted that under section 20 of the Labour Relations Act (LRA), the corporate capacity of the respondent requires that the claimants suing under the branch to do so under a resolution of the branch or through the secretary general who is defined under section 2 of the LRA as the authorised officer to act for the union or branch. The suit herein is premature and the claimants lack the standing to sue. The claimants are officials of the respondent branch with 19 executive committee members and cannot separate themselves outside of the others to file suit.

Section 28 of the LRA requires the union dues to be remitted to the respondent and not its branches. There is a gazetted account and cannot be changed through proceedings such as these and for the court to issue the orders sought will require the claimants to file Judicial Review Application to set aside the Gazette Notice directing employer to remit union funds to a specific account.

The claimants have moved the court prematurely before exhaustion of internal disputes resolution mechanism. The suit should be struck out with costs.

The claimants submit that they have sued in their capacity as officials and members of the respondent and branch, section 12(1) (g) of the Employment and Labour Relations Court Act gives parties wide mandate to hear disputes between union members and the union and to remove the claimants from court they would be rendered without any other forum to litigate.

## **Determination**

As set out in the claim, the claimants have filed suit as the officials and members of the respondent, University of Nairobi Chapter. There is therefore a dual role in the suit. That of the claimants being officials and that of their being members of the respondent. Does that give the claimants locus standi to file the claim and to seek the orders set out in the application?

Section 2 of the Labour Relations Act and the Employment Act read together with section 12 of the Employment and Labour Relations Court Act defines who a trade union representative in judicial proceedings is being the secretary general and that all disputes relating to employment and labour relations on matters between a union member and the trade union are to be filed with the court. In this regard, the claimants have cured any challenge to their capacity to file this suit by setting out that they are suing as officials and members of the respondent and thus covered under section 12 of the Employment and Labour Relations Court Act. Section 12 (1) (g) provides;

*(1) The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including—*

*(a) ...*

(b) ...

**(g) Disputes between a trade union and a member thereof;**

The claimants being members of the respondent can therefore not be locked outside of this court. Any grievance they may have and being set out in the pleadings filed, the court must address on the merits. I find the claimants by describing themselves as members of the respondent, which fact is not challenged in any material way, have the requisite capacity to file suit against the respondent as their union.

Equally, for the claimants to file suit as respondent members, they do not require to move the court under a resolution of the respondent of their branch. The membership of the claimants in the respondent gives them a legal right to sue or be sued.

However, the remedies that the claimants may seek once they have sued in their capacity as respondent members is not similar as filing suit through the secretary general for and on behalf of the trade union or the branch thereof. The interests of the trade union are to be secured by the secretary general at all material times and where the secretary general fails to undertake that mandate, there are the union trustees tasked with the duty to ensure the assets of the trade union are put into good use. See ruling in **John Biiy versus Seth Panyako and others, Cause No.12 of 2017.**

Without going into the merits of the application and suit filed by the claimant which should be assessed on their merits, upon the establishment that the claimant have capacity to file suit in their names as respondent member, it is only fair that the application now stalled for hearing due to the objections filed by the respondent be heard first and the court shall address the merits of the orders sought. To thus rule on the application of section 48 of the Labour Relations Act and the implication of the gazetted respondent account for purpose of receiving union dues will be prejudicial to the application pending hearing.

**On this basis, the objections by the respondent are without merit and are hereby dismissed. Costs in the cause.**

Dated, signed and read in open court at Nairobi this 15<sup>th</sup> day of June, 2017.

**M.  
JUDGE**

**MBARU**

In the presence of:

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