



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

PETITION NO.23 OF 2017

KENYA COUNTY GOVERNMENT WORKERS UNION.....PETITIONER

VERSUS

COUNTY GOVERNMENT OF MACHAKOS.....1ST RESPONDENT

MACHAKOS COUNTY GOVERNMENT

PUBLIC SERVICE BOARD.....2ND RESPONDENT

RULING

1. The ruling herein relates to the Notice of Preliminary Objections filed by the Respondents – County Government of Machakos and Machakos County Government Public Service Board and on the grounds that;

There exists no recognition agreement between the Petitioner and the Respondents as required under section 54(3) of the Labour Relations Act, 2007. Accordingly the Petitioner has no locus standi to commence or maintain this suit

The Petition is bad in law in its entirety and ought to be struck out.

2. Both parties filed written submissions.

3. The Respondents submits that the Petitioner has no recognition with the respondent so as to have standing to file suit pursuant to the provisions of section 54(3) of the LRA. The law obligates an employer in the public or private sector to recognise a trade union for purposes of collective bargaining if the union represents a simple majority. The Petitioner has no recognition with the Respondents or a collective bargaining agreement (CBA) setting out terms and conditions of employment for unionisable employees as held in KUEVACO versus Board of Governors of Maina Wanjigi Secondary School [2015] eKLR.

4. The standing of the Petitioner is key to the question of jurisdiction. There is no interest demonstrated by the Petitioner to file the Petition as held in **Law Society of Kenya versus Commissioner of Lands & others CCHC No.464 of 200 (Nakuru)**. The Petitioner union has no relationship with the Respondents to file the Petition against them as there is no recognition of collective agreement to represent any employees of the respondents. Objections filed should be allowed and Petition dismissed with costs.

5. The Petitioner submits that the Petitioner members are employed by the Respondents and when a

dispute arose, the Petitioner moved the court for orders of injunction. *Locus standi* or standing of a party before the court is based on constitutional provisions under article 162 and since the jurisdiction of the court is not contested then question of standing is a matter of fact as held in **Mumo Matemu versus Trusted Society of Human Rights Alliance & others [2014] eKLR**. The court cannot sanction standing before the court by placing hurdles on access to court unless the litigation is hypothetical, abstract or is in abuse of judicial process.

6. The Petitioner is granted standing by application of section 73 of the LRA which allow an employees' organisation, a trade union to file matters with the court. The Petitioner is a registered trade union to represent employees in the respondents' employment as required under section 48(1) of LRA. The Petitioner members have their rights violated and the Petitioner has the right to file the Petition for its members. Recognition is not necessary to file the petition. Membership with a trade union and recognition of the trade union by an employer are two different matters that should not be used to question the standing of the Petitioner to represent its members as held in **Kenya Chemical & Allied Workers Union versus Botanical Extracts (EPZ) Limited, Cause No.2118 of 2012**. Recognition allows a trade union to negotiate a CBA but lack of recognition does not stop the trade union from representing members in disputes such as the Petition herein.

Determination

7. The petitioner, Kenya County Government Workers Union has filed a Petition citing the violation of constitution rights of its members. In the petition, the Petitioner describes itself as the trade union duly registered under the LRA and as the union with a subsisting Recognition Agreement with the 1st respondent in respect of respondents' employees and has also negotiated and concluded a CBA with the Respondents entered into on 12th October, 2012 and registered with the court under RCA No.21 of 2013.

8. Based on establishing the interest that the Petition is premised on the Petitioner members; the Petitioner alleges the violation of constitutional rights of such members; that the averments made on the face of the pleading is that the Petitioner has recognition agreement and a CBA with the respondents; the questions set out by the Respondents as the basis of lack of standing become matters of fact and not questions of law. Where the Petitioner has asserted that they enjoy and have a CBA with the respondent, such cannot have been obtained before the Petitioner had a recognition agreement as the precursor to a CBA. Where this assertion is not correct, it can well be addressed at the hearing.

9. On this background, the principles set out under **Mukisa Biscuits Manufacturing Co. Ltd versus Westend Distributors Ltd (1969) EA**. Objections made must be on a point of law and which once addressed by the court is likely to deal with the suit and dispose of it. On the face of the pleadings filed by the petitioner, the fact of CBA having been asserted as settled, the Petitioner becomes the right party to file the Petition for and on behalf of its members employed by the Respondents and whose terms and conditions of employment are in dispute. Where such a CBA does not exist, such becomes a fact that can be established at the hearing.

10. The application of section 54 of the LRA is now addressed by the Court of Appeal in **Abyssinia Iron & Steel Limited versus Kenya Engineering Workers Union [2016] eKLR** in the judgement of 31st May, 2016 that the provisions thereof relates to the question of a trade union having recognition for the sole purpose of negotiating collective agreements. With such findings by a higher court which binds this court. On this affirmation, the representation of a trade union of its members in suits such as this is thus not restricted as recognition only relates to the trade union having standing to negotiate a CBA with the employer who has given recognition.

11. The Petitioner is thus covered both ways on the averments that there is a CBA in existence that has since been registered with the court under RCA 21 of 2013. The objections thus filed lack basis and do not meet the requisite threshold.

Objection filed by the Respondents and dated 7th April, 2017 are hereby dismissed. Costs to the Petitioner.

Dated and delivered in open court at Nairobi this 8th day of June, 2017.

M. MBARU

JUDGE

In the presence of:

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