



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA
CAUSE NO. 241 OF 2017
KENYA SHOE & WORKERS UNION.....CLAIMANT
VERSUS
MODERN SOAP FACTORY LTD.....RESPONDENT
RULING

INTRODUCTION

1. The claimant is a trade union registered to represent the interest of employees engaged in the shoe industry. She brought this suit on 31/3/2017 on behalf of Mr. Mganga Chengo, Onesums Kamwila, and Abdulla Yusuf (hereinafter called grievant) to recover terminal dues plus compensation for unfair termination of their contract of service by the respondent on 27/4/2016. According to the claimant all the grievants were employed by the respondent as Machine Operators until 27/4/2016 when they were terminated on account of redundancy.

2. The respondent has denied knowledge of grievants and denied that they were her former employees but she agrees with the claimant that there is no Recognition Agreement and Collective Agreement signed between the parties herein and therefore filed the notice of Preliminary Objection (PO) dated 23/5/2017 praying for the suit to be struck out. The PO is premised on the following grounds.

- (i) The claimant and the grievants are strangers and they lack *locus standi* to bring this suit against her.
- (ii) The claimant lacks *locus standi* to sue on behalf of the grievants under Section 54 of the Labour Relations Act (LRA).
- (iii) The suit is prematurely brought and offends Section 62, 67 and 69 of the Act.

The PO was disposed of by written submissions.

RESPONDENT'S SUBMISSIONS

3. The respondent submitted that the claimant lacks *locus standi* to bring this suit because she lacks sufficient interest. In her view, sufficiency of interest for the claimant in this matter should take the form of recognition by her to represent her employees who are member of the union. She relied on Section 54(1) of the LRA to urge that an employer must first recognize the trade union in terms of Section 54(3) of the Act before it starts to represent the workers. She further relied on ***Communication Workers Union***

vs Safaricom Ltd (2014) eKLR where Mbaru J, held that without recognition by the employer, a trade Union cannot represent an employee working for the particular employer.

4. On the issue of suit being filed prematurely, the respondent submitted that the suit was brought before exhausting the conciliation process and therefore the suit offends Section 62, 67, 68 and 69 of the LRA. That although the claimant lodged a dispute through the Cabinet Secretary for labour and a conciliator appointed, no notice was served to her and the certificate of disagreement issued by the conciliator was done in hurry.

CLAIMANT'S SUBMISSIONS

5. The claimant submitted that she is the registered trade union to represent employees engaged in the Shoe Sector including but not limited to plastic products. She further submitted that the respondent major business is manufacturing of plastic products and all the grievants were employed by her. She therefore contended that she had locus to bring this suit under Section 21 of the LRA and Section 22 of the Employment and the Labour Relations Court Act (ELRCA). The claimant further submitted that the respondent has submitted falsehood by alleging that she is a stranger to the grievants yet in her defence she admits that the claimants worked for her upto 26/4/2016.

6. As regards the conciliation proceedings, the claimant submitted that the parties were notified in writing that the Cabinet Secretary had appointed Mr. Koech of Mombasa Labour office as the conciliator in dispute but the respondent never attended any conciliation meeting convened by the conciliator. That after the period provided for the conciliation by the law lapsed and the claimant brought this suit. in her view the suit herein is not prematurely filed under Section 69 of the LRA.

ANALYSIS AND DETERMINATION

7. The issues for determination herein are:

- (i) Whether the claimant has *locus standi* to file this suit against the respondent.
- (ii) Whether the suit herein is premature.

Locus Standi

8. The respondent believes that the claimant has no *locus standi* to bring this case against her because there is no recognition agreement between them. That by dint of that absence of a recognition agreement, the claimant lacks sufficient interest in the dispute between her and the grievants. In addition she contends that the claimants were never her employees and therefore they also lack *locus standi* to sue her. The claimant has however argued that she has the *locus standi* to bring this suit on behalf of the grievants because she is registered trade union duly mandated to represent employee in the shoes and plastic sector in which the respondent had employed the claimants as machine operators in her manufacturing plant. She has admitted that there is no recognition agreement between her and the respondent but indicated that the recognition is subject of another case pending in court.

9. After careful consideration of the submissions presented to the court including the decision by Mbaru J, in ***Communication Workers Union VS Safaricom Ltd [2014] eKLR***, I am persuaded that the claimant is a stranger to any employment relationship between the respondent and the grievants. There is no averment in the pleading to the effect that the grievants were members of the claimant union and there is no recognition agreement between the claimant and the respondent. It is therefore not clear what interest the claimants have in the employment relationship between the grievants and the respondent.

10. The mere fact that the claimant is registered and mandated to represent unionisable employees in the shoes and plastic sector does not, in my view entitle the claimant to an automatic *locus standi* to substitute all the unionisable employee in the sector and institute suits in her own name even on matters that appears personal and not collective.

11. I agree with Mbaru J's opinion in the *communication workers union case*, that without recognition by an employer, a trade union, even where it is registered to represent workers in a sector, remains a bystander to the disputes between the workers and their employers. However if the workers are members of the union, the union can only assist them in disputes just as a lawyer does without substituting the litigants names from the pleadings. The time has come when the Trade Unions should differentiate between representing their members in collective disputes and assisting them in their personal disputes. In the first instance, the union can sue in its name but in the second scenario, the member must sue in his or her own name.

Premature suit

12. There is no dispute that the dispute herein was reported to the labour Cabinet Secretary who later appointed a conciliator to resolve it. It is also not disputed that the conciliator issued a certificate of disagreement under Section 69 of the LRA. The said section provides that

“a trade dispute is deemed to be unresolved if the conciliator issues a certificate that the disputes has not been resolved, or thirty days lapses after the appointment of the conciliator or any other longer period agreed by the parties expires.

In this case, the conciliator issued the certificate after the respondent allegedly failed to attend the conciliation meetings. Under Section 69 of the LRA, suit herein is not prematurely brought.

DISPOSITION

13. For the reason that the claimant lacks *locus standi* to bring this suit in her own name against the respondent, I allow the PO dated 23/5/2017 and strike out the suit without costs.

Dated signed and delivered this 17th November 2017

O. Makau

Judge