



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS
COURT AT MOMBASA
CAUSE NUMBER 80 OF 2017

BETWEEN

BENSON AMWOGA JUMA..... CLAIMANT

VERSUS

KENYA PIPELINE COMPANY LIMITED...RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Cootow & Associates Advocates for the Claimant

M/S Robson Harris & Company Advocates for the Respondent

RULING

1. This Claim was filed on 30th January 2017. The Claimant avers he was employed by the Respondent as a Driver, in the year 2002. He was summarily dismissed by the Respondent on 22nd July 2016, for alleged negligence in performance of his duties. He states he was not fairly heard, and no valid reason was given justifying Respondent's decision to summarily dismiss him.
2. The Claimant prays the Court to declare that termination was unfair; order that he is reinstated without loss of benefits; or in the alternative, he is paid compensation and full terminal benefits.
3. The Respondent filed a Statement of Response on 27th March 2017. Its position is that the Claim is premature. The Claimant is a Member of Kenya Petroleum Oil Workers Union (KPOWU). His Union reported a trade dispute between the Union and the Respondent herein, in a letter to the Ministry of Labour, dated 2nd December 2016. The issue in dispute before the Labour Office is – wrongful and unfair dismissal of Benson Juma, among other Employees. A Conciliator appointed by the Cabinet Secretary for Labour, had not finalized conciliation process by the time the Claimant initiated his Claim in Court.
4. In an Application dated 29th June 2017, the Respondent prays the Court to stay proceedings herein, pending conclusion of the conciliation process.

5. The Claimant is opposed to the Application. He filed Grounds of Opposition on 7th July 2017, stating that he is properly before the Court, and that this Court is the only recognized forum under the Constitution of Kenya for resolution of employment and labour relations disputes.

6. Parties agreed to have this Application considered on the basis of written submissions, which have been confirmed to be on record.

The Court Finds:-

7. The Claim is premature, and not properly before the Court.

8. The Claimant is a Member of Kenya Petroleum Oil Workers Union. The Union reported a trade dispute to the Ministry of Labour on 8th September 2016. The issue in dispute at the Labour office, is the same issue the Claimant has presented before this Court.

9. He is one of the Employees named as Grievants, before the Conciliator.

10. As late as 11th April 2017, conciliation proceedings were ongoing, as shown in the letter from the Conciliator to the Parties, of the same date, calling for Parties to submit proposals.

11. The position taken by the Claimant that this Court is the only forum where employment and labour relations disputes are resolved, has no foundation.

12. Article 159(2) of the Constitution stipulates that in exercise of judicial authority, the Court shall promote alternative forms of dispute resolution.

13. The Labour Relations Act 2007 provides alternative forms of dispute resolution.

14. Once a Party, through his Trade Union has invoked the Mechanisms under the Labour Relations Act, that Party must exhaust those mechanisms, before coming to Court.

15. It is improper for the Claimant to abandon the conciliation process mid-stream, and initiate judicial process. He has ignored the process initiated by his Union.

16. In doing so, he has acted in disregard of the Employment and Labour Relations Court (Procedure) Rules, 2016. Rule 5 requires that where a dispute has been subject of conciliation, the Claim shall be accompanied by Conciliator's Report, Certificate of Conciliation or an Affidavit sworn by the Claimant, attesting to the reasons why Certificate of Conciliation has not issued.

17. In this dispute, there is an ongoing conciliation process. The Conciliator has not issued any Certificate, to indicate failure of conciliation. It is not known if in the end, Parties will record settlement.

18. The Court is satisfied that the Claim herein is premature and improperly before the Court.

IT IS ORDERED:-

a. The proceedings herein are stayed.

b. The Claimant shall exhaust conciliation process.

c. Parties shall move the Court once conciliation process is finalized.

d. Costs of this Application to the Respondent.

Dated and delivered at Mombasa this 1st day of December 2017.

James Rika

Judge