



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 423 OF 2013

(Originally Nairobi Cause No. 2545 of 2012)

AMALGAMATED UNION OF KENYA

METAL WORKERS

CLAIMANT

v

SETTLERS ENGINEERING LIMITED

RESPONDENT

RULING

1. The Amalgamated Union of Kenya Metal Workers (Union) sued Settlers Engineering Ltd (Respondent) in Nairobi on 20 December 2012 and the issue in dispute was stated as *unlawful and unfair lock out of Mr. Alexander George Chilain*.
2. The Respondent filed its Response on 3 July 2013 and on 22 November 2013, the Principal Judge directed that the Cause be transferred to Nakuru for hearing and determination.
3. On 23 October 2014, the Court in the presence of both parties' representatives fixed the Cause for hearing on 28 May 2015.
4. When the Cause was called out for hearing on 28 May 2015, none of the parties were in Court, and the Court dismissed the Cause.
5. The dismissal prompted the Union to file an application for review on 18 August 2015. The review was to set aside the dismissal order.
6. On 10 November 2015, the Court directed that the application be served for *inter partes* hearing on 18 November 2015, but it was heard on 3 December 2015 as it could not be reached on 18 November 2015.
7. The Union's case on the review is straightforward. It is that its representative heard the hearing date as 29 May 2015 instead of 28 May 2015.
8. The Union contended that its representative attended Court on 29 May 2015, and found out the Cause had been dismissed and to show the attendance, a receipt for payment of adjournment fees paid the same day was annexed. Also annexed was a travelling receipt dated the same day issued by a public transporter.
9. A copy of the Grievant's receipt showing he travelled from Kisumu on 28 May 2015 was also annexed.
10. The Respondent opposed the application and relied on a replying affidavit sworn by Paul Murimi Kiongo. The thrust of its case was that there had been a 3 year delay to prosecute the Cause; that the review application was filed after 3 months without explanation and that the application was defective.
11. In submissions, it was urged on behalf of the Respondent that the Union had no locus to act on behalf of the Grievant because there was no recognition agreement between the Union and the Respondent, and therefore reinstating the Cause would be an exercise in futility.

12. The Respondent further submitted that reinstating or allowing the cause would be in violation of sections 54 and 73 of the Labour Relations Act, section 48 of the Employment Act and section 23 of the Labour Institutions Act.
13. In a brief reply, the Union countered that the objection anchored on locus had been dismissed by the Court previously and no appeal was preferred against the dismissal.
14. With all due respect to the Respondent, the locus of the Union cannot properly be determined under the guise of the review application. It was the subject of a preliminary objection which was disallowed by Ongaya J on 2 April 2014.
15. Section 48 of the Employment Act has no relevance to the present proceedings or indeed to representation of parties in Court. It deals with representation before a Labour Officer.
16. Section 23 of the Labour Institutions Act on its part is part of the Act which was repealed by the then Industrial Court Act, while sections 54 and 73 of the Labour Relations Act are also of no assistance to the Respondent on the review application.
17. In the Court's view, the contention by the Union that there was a misunderstanding on the hearing date is corroborated by the receipts annexed to show a representative traveled on 29 May 2015 and paid adjournment fees on the same date. Further corroboration can be discerned from the Grievant's travel receipt.
18. The Court would therefore exercise its discretion in favour of the Union and set aside the dismissal order of 28 May 2015. The Court so orders.
19. The Cause should be set down for hearing on the merits.
20. Costs in the Cause.

Delivered, dated and signed in Nakuru on this 12th day of February 2016.

Radido Stephen

Judge

Appearances

For Union Mr. Patrick Makale (Industrial Relations Officer)

For Respondent Mr. Murimi instructed by Murimi, Ndumia, Mbago & Muchela Advocates

Court Assistant Nixon