



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 1526 OF 2013

NATIONAL UNION OF WATER & SEWERAGE EMPLOYEES.....CLAIMANT

VS

NAIROBI WATER & SEWERAGE COMPANY LIMITED.....RESPONDENT

RULING

1. This ruling emanates from the Respondent's application brought by way of Chamber Summons dated 8th July 2014 seeking consolidation of claims, raising common questions of fact and law, brought on behalf of 85 employees. The application is based on the following grounds:

- a. Similar questions of fact and law are raised in all the claims where the 85 employees are involved;
- b. The law allows consolidation of suits if it appears that in any number of suits some common questions of fact and law arise, or that it is practical and appropriate to proceed with the issues raised in the suits simultaneously;
- c. The consolidation of the said related matters will avoid duplication of proceedings and multiplicity of suits;
- d. The order sought will result in saving of costs and will avoid conflicting decisions on similar facts;
- e. It will be just, convenient and expedient for all the parties involved if all related matters are consolidated, canvassed and heard as one;
- f. No party will suffer prejudice if the suits are consolidated.

2. In a supporting affidavit sworn by the Respondent's Counsel on 8th July 2014 he cites the following for consolidation:

- a. Cause No 2062 of 2012: National Union of Water & Sewerage Employees v Nairobi Water & Sewerage Company;
- b. Cause No 464 of 2014: Philemon Atik & Another v Nairobi Water & Sewerage Company;
- c. Cause No 423 of 2014: Patrick Nyingi Kibui v Nairobi Water & Sewerage Company;
- d. Cause No 1334 of 2013 (involving 36 employees): Kenya County Government Workers Union v Nairobi Water & Sewerage Company;
- e. All other related claims raising common questions of law and fact.

3. In a replying affidavit sworn by Philemon Atik in his capacity as the National Treasurer of the National Union of Water and Sewerage Employees he depones that the current application is aimed at confusing matters in several cases which are distinct in nature.

4. With regard to Cause No 1526 of 2013, Atik states that a conciliator's report is pending implementation. He adds that Cause No 2062 of 2012 relates to union dues and agency fees while Cause No 423 of 2014 is a claim for unlawful termination by a single employee. With respect to Cause No 1334 of 2013, Atik depones that the claim involves 36 employees who were not party to the conciliation proceedings in Cause No 1526 of 2013.

5. Rule 23 of the Rules of this Court allows for consolidation of suits where it appears that some common questions of fact or law arise. In addressing the issue of consolidation of suits in *Law Society of Kenya v Centre for Human Rights & Democracy & 12 Others [2014] eKLR* the Supreme Court held that:

“The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes, and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never meant to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party that opposes it.....In addition, the Court must be satisfied that no injustice would be occasioned.....if consolidation is ordered.”

6. I have looked at the suits targeted for consolidation in this application and find that they not only raise diverse points of fact and law but are also at different stages in their litigation life. The Court has therefore arrived at the conclusion that consolidation as prayed by the Respondent would not serve the ends of justice. The Respondent's application is therefore dismissed with costs being in the cause.

7. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 5TH DAY OF FEBRUARY 2016

LINNET NDOLO

JUDGE

Appearance:

Mr. Owuor for the Claimant

Mr. Macharia for the Respondent