



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 75 OF 2015

DALMUS WAMUGUNDA1ST CLAIMANT
ISAYA GITHAE.....2ND CLAIMANT
DICKSON GATURA.....3RD CLAIMANT
JOB MUGIRE.....4TH CLAIMANT
DAVID KARAINI.....5TH CLAIMANT
JOSEPH SIMIYU.....6TH CLAIMANT
DENNIS WEKESA.....7TH CLAIMANT
JAMES KIMATHI.....8TH CLAIMANT
DAMSON NYAGA.....9TH CLAIMANT

VERSUS

G4S KENYARESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 11th March, 2016)

RULING

The respondent filed a notice of motion on 30.06.2015 through Anne Babu & Company Advocates. The motion was brought under section 12(2) of the Employment & Labour Relations Court Act, and, rules 9, 14 (6) and 16 of the Industrial Court (Procedure) Rules, 2010. The respondent prayed that the claim herein be struck out and the costs of the application be borne by claimants.

The application was based on the following grounds:

1. The suit is contrary to rule 9 of the Industrial Court (Procedure) Rules, 2010 as no leave has been sought or granted by the court for the 1st and 5th claimants to sue on behalf of the other claimants or to give evidence on behalf of the other claimants.
2. There was misjoinder of the causes of action because paragraphs 5, 6, and 9 of the amended statement of claim show that the claim is with respect to 3 different causes of action.
3. There was misjoinder of parties because each claimant was employed upon separate contracts and

- separately dismissed upon facts specific against each of the claimants.
4. No leave was granted for the claimants to amend the statement of claim.
 5. It is in the interest of justice that the application is heard and allowed.

The claimants filed the grounds of opposition on 15.07.2015 through G.O. Ombati & Company Advocates. The claimants stated as follows:

1. The application was misconceived and an abuse of court process.
2. The claimants were granted leave by the court for the 1st and 5th claimants to act on behalf of the other claimants.
3. The claim cannot be defeated only on account of misjoinder of claimants or causes of action.
4. The claimants were granted the court's leave on 18.06.2015 to amend the claim.
5. The application is only meant to delay the hearing of the suit.
6. The application lacks merit and should be dismissed with costs.

Thereafter the claimant's advocates ceased to act and the claimants opted to act in person. The court has considered the application and the grounds of opposition and makes findings as follows:

- a. The record shows that the court granted the claimants leave on 18.06.2015 to file and serve an amended statement of claim. The amended statement of claim was filed on 08.06.2015. The statement was signed by the 1st and 5th claimant. The two claimants attached their respective verifying affidavits. The court finds that the amended statement of claim forms the claimants' primary pleading in this case.
- b. Under the cited rule 9 the court may permit one of the claimants in the suit to file the suit on behalf of the other employees and during the hearing of the application the claimants urged the court to permit them to be heard in evidence to support their individual cases. The court has considered that at the hearing of the application the claimants were acting in person. The amended statement of claim as filed raises clear causes of action by the claimants against a single employer, the respondent. The suit perfectly fits the kind of permission that is envisaged under rule 9 and the attached verifying affidavits state that the other claimants have instructed the 1st and the 5th claimants to file it on behalf of the other claimants. The court has considered Article 159 (2) (d) of the Constitution that justice shall be administered without undue regard to procedural technicalities. However each of the claimants is mentioned as a claimant and each will give evidence at the hearing of the suit. In view of all the highlighted considerations, the court returns that it is the interest of justice that the claimant's suit founded upon the amended claim is duly filed with the court's permission and the respondent was misconceived that it was a representative suit requiring leave of the court.
- c. The claimants have indicated that each of them will give evidence at the hearing of the suit and they therefore do not require the court's permission that only the 1st and 5th claimants testify to establish their case as envisaged in the cited rule 9.
- d. The court has considered that all claimants have pleaded that they were employed by the respondent and they were all dismissed from employment. The court returns that in the circumstances the respondent's case that there was misjoinder of parties or causes of action was unfounded.

In conclusion, the respondent's application by way of the notice of motion filed on 30.06.2015 is hereby dismissed with costs and parties are now invited to fix the suit for hearing on a convenient date.

Signed, dated and delivered in court at Nyeri this Friday, 11th March, 2016.

BYRAM ONGAYA

JUDGE