



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 318 OF 2015

KENYA NATIONAL PRIVATE SECURITY WORKERS UNION.....CLAIMANT

V

LAVINGTON SECURITY LIMITED.....RESPONDENT

RULING

1. The Kenya National Private Security Workers Union (Union) commenced legal proceedings against Lavington Security Limited (Respondent) and the issue in dispute was stated as *refusal to pay Mr. Daudi Wajia his terminal dues*.
2. The Respondent filed a Response and Notice of Motion on 11 December 2015.
3. This ruling relates to the motion to which the Union filed grounds of opposition on 11 January 2016.
4. The motion is to the effect that the cause of action being advanced by the Union on behalf of the Grievant is contrary to section 62(3)(a) of the Labour Relations Act, and therefore the Memorandum of Claim should be struck out.
5. Among the reasons advanced in support of the motion are that the Grievant was dismissed on 1 December 2014, but the report to the Cabinet Secretary, Labour was made only on 16 July 2015, some 7 months after the dismissal instead of within 90 days as stipulated by section 62(3)(a) of the Labour Relations Act.
6. The Union in opposing the motion urged that section 62(3)(a) of the Labour Relations Act should be read together with section 62(3)(b) of the Act which permits the Cabinet Secretary to accept disputes concerning unfair dismissals outside the stipulated time, on cause being shown.
7. The Cabinet Secretary, Labour accepted the report of a trade dispute by the Union through a letter dated 17 September 2015 and appointed a Conciliator.
8. The Conciliator issued a certificate of unresolved trade dispute on 15 October 2015, hence the present proceedings.
9. Section 62(3)(b) of the Labour Relations Act permits the Cabinet Secretary, Labour to accept a dispute concerning dismissal outside the 90 days period prescribed.
10. The Cabinet Secretary is not a party to these proceedings. Nevertheless, what is clear is that he accepted and admitted the dispute reported by the Union. Whether the Union showed cause is at large, and cannot be determined on the basis of the material placed before Court.
11. However, the Court is entitled to presume that the Cabinet Secretary, Labour, is aware of the provisions of the aforesaid law and exercised his mind accordingly before accepting the dispute.
12. Any challenge to the acceptance of the dispute should have involved the Cabinet Secretary, or should have been placed at the first instance before the Chief Industrial Relations Officer, who acted on behalf of the Cabinet Secretary or the Conciliator.
13. The objection by the Respondent therefore has no merit and is dismissed with no order as to costs, considering the parties herein are laymen.
14. The Respondent also raised questions about the competence or locus of the Union to represent the

Grievant when there was no evidence of his membership of the Union.
15. That discussion must wait an appropriate time.

Delivered, dated and signed in Nakuru on this 11th day of March 2016.

Radido Stephen

Judge

Appearances

For Union Mr. Onwonga, Industrial Relations Officer, instructed by Kenya National Private Security Workers Union

For Respondent Mr. Edwin Kipruto, Branch Manager, Lavington Security Ltd

Court Assistant Nixon