



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAKURU

CAUSE NO. 246 OF 2015

EDWIN MOMANYI.....1ST CLAIMANT

ANTHONY ADESI.....2ND CLAIMANT

GEOFFREY KAMAU.....3RD CLAIMANT

ISSAC MAHERO.....4TH CLAIMANT

GEORGE ONYANGO OKOLA.....5TH CLAIMANT

v

WONDER FEEDS LIMITED.....RESPONDENT

RULING

1. The 5 Claimants mounted a joint Claim against the Respondent on 3 September 2015 and they stated the issues in dispute as

1. Unfair terminations and or bad labour practices hidden as contracts under Part III Sections 10C, Subsection 2C and or illegal redundancy.
2. *Contract* to provisions of section 10(2) C2 40 of the Employment Act 11 of 2012 Laws of Kenya.
3. Underpayment of wages
4. Wrong job description.

2. When the Respondent was served, it filed a Notice of Preliminary Objection that

- a) That prior to the filing of this matter the claimants referred this dispute to the Ministry of Labour Social Security and Services for conciliation pursuant to the Provisions of Part VII of the Labour Relations Act No. 14 of 2007.
- b) After conciliation the dispute was resolved pursuant to section 68(1) of the said Act.
- c) The Claimants have refused to comply with the terms of the conciliation agreement signed on

11th February, 2015 but have instead filed this case.

d) This Court has no jurisdiction to hear and determine this matter as there is no dispute between the parties.

3. The Claimants filed what was referred to as *Response to the Respondent's Notice of Preliminary Objection* and the objection was taken on 25 January 2016.

4. Before delving into the submissions, the Court would wish to encourage parties to file pleadings and documents prepared with a little bit of more care, and respect for the practices and traditions of the Court as outlined in the Statutes and Rules governing the operations of the Court.

Respondent's case on the objection

5. According to the Respondent, the Court had no jurisdiction to entertain the present Memorandum of Claim because the parties had undergone a conciliation process and an agreement was signed on 11 February 2015 in terms of section 68 of the Labour Relations Act.

6. In the view of the Respondent, any dispute between the parties was resolved at conciliation, and this Court therefore cannot sit as an appellate Court over the agreement reached.

7. The Respondent filed a copy of a Memorandum of Agreement between KUCFAW and Wonder Feeds Ltd executed on 11 February 2015 before a Conciliator and a letter written by the Respondent to the Claimant Union on 18 June 2015 advising the Union to get the Claimants to report to work collect contracts.

Claimants' case on the objection

8. According to the Claimants, the cause of action presented for the Court's determination related to *underpayments, accrued leave, overtime and unfair labour practices* while the agreement reached during conciliation related to the Claimants applying for their jobs.

9. Mrs. Ndeda who appeared for the Claimants also urged that the Claimants were not part of the agreement reached before the Conciliator, and therefore the Claimants were properly before the Court, which had jurisdiction.

Evaluation

10. That the parties were not candid with the Court goes without belabouring. This is so because the parties knew what complaints or disputed issues had been placed before the Conciliator, but they failed to disclose the same either in the pleadings or during the taking of the objection.

11. The Court has of course seen a letter dated 7 January 2015 from the Chief Industrial Relations Officer to the Respondent and Kenya Union of Commercial Food & Allied Workers, but the dispute therein relate to *refusal to deduct and remit union dues and recognition agreement*.

12. Some of the Claimants appeared to have rejected the reported dispute as demonstrated by their letter dated 22 June 2015 (these correspondences are in the Claimants list).

13. In fact, the Claimants referenced their letter *Our termination Case*, the implication being that the Claimants had been dismissed by the date of the letter.

14. In paragraph 10(vi) of the Memorandum of Claim, the Claimants pleading appear to suggest that the termination of their services was on 24 December 2014.

15. The only logical conclusion therefore is that the dispute reported by the Union as acknowledged in the

Chief Industrial Relations Officer's letter of 7 January 2015 related to other issues.

16. The Memorandum of Agreement dated 11 February 2015 therefore related to a distinct dispute, and pursuant to clause 4 thereof, the parties agreed that any disputes arising afterwards would be dealt with in accordance with *dispute resolution mechanism*. It is not clear whether the issues presented included *unfair termination of employment, overtime, underpayments and wrong job descriptions*.

17. Had the Respondent demonstrated that these issues were the subject of the conciliation that would have been the end of this Cause.

18. The Memorandum of Agreement signed provided for resolution of disputes arising thereafter. The dispute resolution mechanism referred to remained undisclosed, and the Court can only presume that these are mechanism agreed between the Union and the Respondent.

19. Because the parties did not suggest that those mechanisms had been exhausted, it is only fair that that route be explored at the first instance.

20. Because of the failure to make material disclosure, it is the view of the Court that the Cause herein be stayed pending the parties going through the mutually agreed internal dispute resolution mechanisms under the office of the County Labour Officer, Nakuru.

21. This Cause will be mentioned at a mutually convenient date to report back.

22. The preliminary objection stands dismissed with an order that costs be in the cause.

Delivered, dated and signed in Nakuru on this 7th day of March 2016.

Radido Stephen

Judge

Appearances

For Claimants Mrs. Ndeda instructed by Ndeda & Associates

For Respondent Mr. Wamaasa instructed by Wamaasa, Masese, Nyamwange & Co. Advocates

Court Assistant Nixon