



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI
CAUSE NO. 83 OF 2014

MOSES OTONDI SIGU CLAIMANT

VERSUS

ROYAL GARMENTS INDUSTRIES EPZ LIMITED RESPONDENT

RULING

1. On 7th October 2015 the Respondent filed Notice of preliminary Objections to the suit filed by the Claimant on 28th January 2014. The grounds are that
 - a. *The entire suit is premature, misconceived, incompetent, and fatally defective and does not lie.*
 - b. *The suit offends the mandatory provision of sections 54(3) and 59 of the Labour Relations Act, 2007.*
 - c. *The Court lacks jurisdiction to entertain the suit herein.*
2. The Respondent on 10th December 2015 filed grounds of opposition on the grounds that the notice by the Respondent is an abuse of the Court and meant to delay fair trial and justice for the claimant.
3. Both parties filed their written submissions.
4. The Respondent submit that the claim is on wrongful dismissal of the Claimant who was a member of a trade union and should have channelled through his trade union before filing the same in court. The union is by law entitled to act for the Claimant for all unionisable employees and the Claimant chose to disregard the rules of his union. Section 59 of the Labour Relations Act, parties are bound by a CBA and the Claimant being a member of Tailors and Textile Workers Union is bound by the terms. CBA is negotiated to cover present and past members and the Claimant is a past member bound by the CBA and prematurely came before court.
5. The Respondent submit that there is CBA between the parties dated 6th February 2014. Where parties have selected one of the dispute settlement mechanism, they ought to exhaust is before taking other mechanisms as held in **Kenya Chemical and Allied Workers Union versus East African Portland Cement Co. Ltd [2013 eklr]**.
6. The parties should be allowed to negotiate on the terms of compensation of the Claimant as the Claimant is bound by the CBA. The Claimant cannot take the option of seeking to apply favourable terms of the CBA and then fail to comply with the terms of dispute resolution. The Court should dismiss or stay the proceedings herein pending negotiations with the Claimant union as otherwise the Court lacks jurisdiction to hear this matter.

7. The Claimant submit that he has a right to institute suit as an individual even if he is a member of the union as there is no law barring him to file the current suit. There is no CBA attached herein for the Court to make the basis of the objections raised. Article 159(2) (d) and (e) of the constitution is clear that justice shall be administered without undue regard to procedural technicalities and the Court is to promote and protect these principles. That the Court is established under article 162(2) of the constitution to handle all matters of employment and labour relations and the Claimant is properly before this court. section 12(1)(a) of the Employment and Labour Relations Court Act gives the Court jurisdiction to handle disputes relating to and or arising out of employment between an employer and employee.

8. Section 22 of the Employment and Labour Relations Court Act forms the conceptual framework for standing before this court.

22. In any proceedings before the Court or a subordinate court, a party to the proceedings may act in person or be represented by an advocate, an office bearer or official of the party's trade union or employers' organization and, if the party is a juristic person, by a director or an employee specially authorized for that purpose.

9. A party with a claim of employment and labour relations can file it before this Court in person, through his advocate or through the union or employers' organisation. The Court also recognises the vital role played by the various actors before this Court especially trade union and employers' organisation. Indeed the Labour Relations Act is one of the key statutes that this Court makes great reference to as it regulates unionisation and associations of employees and for employers respectively. Therefore the provisions with regard to unionisation and association of employer and employees makes a foundational basis for the work of the court. Under the Labour Relations Act, unionisation and association of employees and employers is a lawful process. Where employees join together under a union of their choice, under this law they form a trade union. Employers on the other hand are allowed to associate and form an association. Under such formations parties are allowed to negotiate collective agreements which have a legal force set out under section 59 of the Labour Relations Act. Once such an agreement is in place, it must be registered with the Court so as to give it the legal force as a binding and enforceable document. It terms remain in force for present and past members and cannot be negated simply because section 22 of the Employment and labour Relations Court Act exists.

10. With the enactment of the Employment and Labour Relations Court Act and the Labour Relations Act, there exists Rules of Procedure to give meaning to the statutes and to ensure an effective process in accessing the rights set out in the law. Once an employee is unionised and is a member of a trade union that enjoy a collective agreement with the employer, such an employee is bound by the terms and conditions of the agreement. Where a dispute arises, Rule 6 and 7 of the Court Procedure Rules guide parties on how to file a claim. Such must take into account any collective agreement in force at the time as with unionisation, an employee has allowed the union to act on his behalf and the union is bound to act in the best interests of the employee who is there member.

11. The objection herein by the Respondent relate to the application of section 54(3) and 59 of the Labour Relations Act. Section 54(3) regulate the recognition of a trade union by an employer. the Claimant in the may have been unionisable but I do not find evidence as to which union he belonged to, the pay slip attached to the Defence filed on 7th October 2015 does not show any union dues deductions. The submissions that he belonged to the Tailors and Textile Workers Union. I do not find such evidence in the pleading filed for a finding that this is a matter that the Court can make a conclusive finding at this stage.

12. Section 59 of the Labour Relations Act set the out effect and purpose of a collective agreement. Where the Respondent and the Textile Workers Union had such an agreement, it was registered with the Court and covers the claimant, such is to be enforced as it is a binding document with the force of law. However such agreement is not attached herein for an assessment as to the provisions with regard to disputes resolution.

13. What the Respondent is advancing is correct save that the subject CBA setting out the dispute

resolution mechanism with regard to any aggrieved party ought to have been annexed to the notice of objection or the defence filed on 7th October 2015. Without this document, the CBA, the averment that there exists a particular dispute resolution mechanism other than the current forum, this court, lack basis.

14. Where is the union, Tailors and Textile Workers Union? I am yet to come across a matter where a union, recipient of union dues from an employee, comes to Court with an application such as the one filed by the Respondent. Where indeed the union is keen to represent their member the claimant, nothing stops them from seeking enjoyment herein. Indeed the purpose of unionisation is to secure employee rights in times of employment and when an employee is faced with a dispute such as dismissal or termination that is said to be unfair, wrongful or with want to compliance to any law or constitution.

15. The objections herein cannot therefore find basis on the absence of evidence that the Claimant is bound by a particular agreement between the Respondent and the Tailors and Textile Workers Union. For purposes of proceeding herein, such union is a third party. The subject recognition agreement or collective agreement are not attached herein. The Claimant enjoy the right to initiate proceedings herein in person or through his legal representative in the absence of evidence to the contrary. Even where such evidence of unionisation and an agreement exists, the employee retains the right to commence proceedings before this Court unless it is shown that under any statute, such proceedings should be commenced or initiated in a different manner or forum.

Objections herein lack merit. These are dismissed with costs to the claimant. Parties shall set the matter for hearing.

Orders accordingly.

Delivered in open Court at Nairobi this 2nd day of March 2016.

M. Mbaru

JUDGE

In the presence of

Court Assistant: Lilian Njenga

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