



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 1518 OF 2015

KENYA CHEMICAL & ALLIED WORKERS UNION.....CLAIMANT

VS

KENPLASTICS LIMITED.....RESPONDENT

RULING

1. The Respondent's application by Notice of Motion dated 1st October and filed in Court on 5th October 2015 seeks orders for dismissal of the Claimant's claim on the following grounds:
 - a. That among the issues raised in the claim is deduction and remittance of union dues which has also been raised in a previous existing suit filed by the Claimant against the Respondent being ***Nairobi Employment and Labour Relations Court Cause No 2152 of 2014***;
 - b. That the said issue is pending determination in the said suit and a such a further suit on the same issue is bad in law and is an abuse of the court process;
 - c. That in the current claim, the Claimant raises the issue of unlawful lockout of the Respondent's workers yet the Claimant in its Memorandum of Claim admits that the parties do not have a Recognition Agreement which the Claimant is pursuing under ***Cause No 1251 of 2014***;
 - d. That the Claimant therefore lacks *locus standi* to institute the current claim;
 - e. That the claim is incompetent and frivolous.
2. The issue for determination in this application is whether the Claimant's claim is properly before the Court. The Respondent argues that the application is bad in law on two counts: first, the issue of union dues is the subject of ***Cause No 1251 of 2014*** which is pending before this Court; second, the Claimant has no *locus standi* to bring the claim since it is has no Recognition Agreement with the Respondent.
3. On the first issue, I have looked at the Memorandum of Claim filed by the Claimant on 28th August 2015 alongside the Memorandum of Claim in ***Cause No 1251 of 2014*** and find that the two claims are substantially different. In ***Cause No 1251 of 2014***, the issues in dispute are:
 - a. Refusal to sign Recognition Agreement contrary to Section 54(1) of the Labour Relations Act, 2007;
 - b. Failure to implement deduction of union dues contrary to Section 48(1) of the Labour Relations Act.

4. On the other hand, the substance of the claim in the current **Cause No 1518 of 2015** has to do with lock-out of the Respondent's workers who are the Claimant's members. In my view, the two claims are not the same and neither of them can be said to be improperly before the Court.

5. On the issue of *locus standi*, the only thing I will say is that there is now firm jurisprudence from this Court (variously constituted) to the effect that a trade union does not need to enjoy recognition status for it to have *locus standi* to represent its members. In **Kenya Chemical and Allied Workers Union v National Cement Company Limited (Cause No 1113 of 2012)** Rika J rendered himself as follows:

“It is not a requirement under the Labour Relations Act that for a Trade Union to act for its Members in individual disputes filed in Court, that Trade Union should have a recognition agreement with the concerned Employer.”

6. Similarly, in **Kenya Chemical & Allied Workers Union v Botanical Extracts (EPZ) Limited (Cause No 2118 of 2012)** Onyango J held that representation is not a requirement for purposes of representation, the only requirement is membership.

7. Finally, in **Transport and Allied Workers Union v DHL Global Forwarding (K) Limited (Cause No 745 of 2010)**, I stated as follows:

“While recognition allows Trade Unions to negotiate a Collective Bargaining Agreement, it is not a prerequisite to union representation. The right to representation is conferred by membership which is itself a right under Article 41 of the Constitution of Kenya, 2010.”

8. I have no reason to depart from this view and therefore find that the Claimant has the necessary *locus standi* to bring this claim on behalf of its members. Overall, I find that the Claimant's claim is properly before the Court. As a result, the Respondent's application fails and is dismissed with costs to the Claimant.

9. It is so ordered.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 22ND DAY OF APRIL 2016

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JUDGE

Appearance:

Mr. Mueke (Union Representative) for the Claimant

Mr. Mbari for the Respondent