



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO. 1905 OF 2011

KENYA UNION OF COMMERCIAL, FOOD AND ALLIED WORKERS CLAIMANT

VERSUS

ISTA PRODUCTS (EPZ) LIMITED RESPONDENT

RULING

1. The respondent filed a notice of preliminary objection on 8th February 2016 to wit;

The present suit is *resjudicata* since the issues between the parties were raised and finalized between the parties in **Industrial Court Cause No. 594 of 2011**.

2. The preliminary objection is opposed vide a rebuttal filed on 18th March 2016.

Determination

3. From the competing submissions by the parties this court has found the following facts to have been proved on a balance of probabilities;

That the issue in dispute in **Cause No. 594 of 2011** was “*lockout of 122 employees on 5th April 2011.*”

4. The lock out prompted the claimant to move to court on a certificate of urgency seeking an order to stop the lock out and have the employees reinstated and the employer not take any disciplinary action against the employees once reinstated.
5. All but fifty eight (58) of the employees were readmitted to work. The fifty eight (58) were either dismissed from employment or did not return to work.
6. The issue in the present case is the unlawful, unfair, unjustified dismissal of fifty eight (58) employees whose names appear in the memorandum of claim
7. It is the court’s finding that the issue in dispute in this case is different from the issue in dispute in **Cause No. 594 of 2011**.
8. That at the time cause No. 594 of 2011 was filed, the fifty eight (58) grievants in this suit had not been dismissed from employment and therefore dismissal of the fifty eight (58) could not have been an issue then.
9. The previous suit had one hundred twenty two (122) grievants who had been locked out by the employer while this one deals with 58 grievants who were dismissed from employment.
10. The claim does not arise from the same action by the respondent and the subsequent action by the

respondent could not have been raised in earlier suit. There is no decision from the court on the issue of dismissal of the fifty eight (58) grievants.

11. The defence of *resjudicata* is therefore not available to the respondent. See Black's law dictionary, ninth Edition, on definition of '*resjudicata*' as;

“a thing adjudicated, an issue that has been definitely settled by judicial decision; an affirmative defence barring the same parties from litigating a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transactions and that could have been but was not raised in the first suit.”

12. Accordingly, the preliminary objection is not upheld and the suit to take its normal course.

Dated and delivered at Nairobi this 31st day of May, 2016.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE