



REPUBLIC OF KENYA
EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO.90 OF 2016

(Before D. K. N. Marete)

**KENYA UNION OF EMPLOYEES OF POLYTECHNICS,
COLLEGES & ALLIED INSTITUTIONS (KUEPCAI)..
.....CLAIMANT**

VERSUS

**THE BOARD OF MANAGEMENT, NAIROBI TECHNICAL TRAINING
INSTITUTE.....RESPONDENT**

RULING

This is a Preliminary Objection by respondent dated 24th May, 2016 and raises the following issues;

1. *That there being no privity of contract between the claimant and the respondent on the subject matter of the claim the claimant has no legal right to sue the respondent.*
2. *That the claimant has not pleaded anything that would enable it to supplant the so called grievant as a party herein, and not merely act as his legal representative.*
3. *That there is no connection between the matters pleaded and this honourable court and the claimant thus appears to be engaged in forum shopping.*

The matter came to court on 22nd June, 2016 when they agreed on a determination of the preliminary objection on the basis of the record of court.

The claimant in her claimant's Response to the Preliminary Objection dated 21st June, 2016 disputes and opposes the preliminary objection and submits that she has a legal right in the cause by;

2. *That, the Claimant herein hold the legal right of suing the Respondent within the meaning of mandatory provision of Article 22 (2) (b) & (d) of The Constitution of Kenya 2010 and Section 73 (3) of The Labour Relations Act, No. 14 of 2007 Laws of Kenya and hence, paragraph 1, of the Notice of Preliminary Objection by the Respondent herein is meant to mislead this Honourable Court.*

3. *That, the Claimant herein does exists as a duly “registered trade union” and a “trade union” within the meaning of mandatory provision of Section 2 – Interpretation of the Labour Relations*

Act, No. 14 of 2007, Laws of Kenya that state inter alia:-

“registered trade union” means a trade union registered or deemed to be registered as a trade union under this Act;

“trade union” means an association of employees whose principal purpose is to regulate relations between employees and employers, including any employers' organization;”

It is the claimant's further submission that the preliminary objection is a nullity and non starter in that the claim is brought in by a legitimate grievant through a union of his choice. This is as follows;

6. *That, the mandatory provisions of “Chapter Four, The Bill of Rights, Part 2- Rights and Fundamental Freedoms”, Article 36 (1) & (2) of The Constitution of Kenya, 2010 do provide every person right to freedom of association which Article, state inter alia:*

“(1) Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind.

(2) A person shall not be compelled to join an association of any kind.

(3)”

7. *THAT, further, the mandatory provisions of “Chapter Four, The Bill of Rights, Part 2- Rights and Fundamental Freedoms”, Article, 41 (1) & (2) of The Constitution of Kenya provide every person the right to fair labour practices which Article, states inter alia:-*

“(1) Every person has the right to fair labour practices

(2) Every worker has the right:-

(a) to fair remuneration;

(b) to reasonable working conditions;

(c) to form, join or participate in the activities and programmes of a trade union; and

(d) to go on strike.”

9. *That, the claimant herein avers the Notice of Preliminary Objection by the Respondent herein dated 24th May, 2016 is grossly aggrieved, mischievous and lacking merit.*

The issue for determination is whether the preliminary objection has presented satiates the prerequisites of a preliminary objection as enunciated in the celebrated authority of **Mukhisa Biscuit Company Limited Verses Westend Distributors Limited (1969) EA 696** at page 701 as follows;

“A preliminary objection is in the nature of what used to be a demure. It raises a pure point of law which if argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does nothing but unnecessary increase costs and occasion confuse the issues. This improper practice must stop.”

The objector in the instant case raises an objection on grounds of privity of contract between the claimant and respondent and connection between the claimant and basis for the claimant's case. These to me are not clear cut aspects of law and would require factual basis to prove. This conflicts with the ingredients of a preliminary objection as aforecited and therefore render it fallacious. I am therefore inclined to

dismiss the preliminary objection with an order that each party bear their own costs of the preliminary objection.

Delivered, dated and signed this 30th day of June 2016.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Japheth A. Agura for the Claimant Union.
2. Mr. Okeke instructed by Ogolla H. J. Okeke advocates for the Respondent/Objector.