



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 1896 OF 2015

KENYA SCIENTIFIC RESEARCH INTERNATIONAL,

TECHNICAL & INSTITUTIONS WORKERS UNION.....CLAIMANT

VERSUS

M-CARE LIMITED..... RESPONDENT

RULING

1. The respondent raised a preliminary objection that the applicant lacked the locus to file the dispute herein. That is to say the applicant did not have a collective bargaining agreement or a recognition agreement with the respondent as required by law to allow it represent the claimants.

2. When the matter came before me on 2nd March, 2016, I directed that the respondent files and serves submissions on the preliminary objection within fourteen days and the applicant do make a response within a similar period after service. Only the respondent filed submissions.

3. In his submissions, Mr. Midikira for the respondent submitted that locus standi is regulated by law and the Court does not have discretion over that. According to counsel, in the absence of a recognition agreement, the applicant could not file a trade dispute within the meaning of Labour Relations Act. In this regard counsel relied on the case of **Communication Workers' Union vs. Safaricom Ltd and Kenya Union of Employees of Voluntary and Charitable Organizations v. BOG Maina Wanjigi Secondary School.**

4. Section 2 of the Labour Relations Act define recognition agreement as:-

“an agreement in writing made between a trade union and an employer, group of employers or employers’ organization regulating the recognition of the trade union as the representative of the interest of unionisable employees employed by the employer or by members of an employers’ organization.”

5. The section further define a collective bargaining agreement as:

“a written agreement concerning any terms and conditions of employment made between a trade union and an employer, group of employers or organization of employers.”

6. The essence of a recognition agreement is therefore to confer on the union so recognized, the right to engage and interact with the employer on behalf of its members for purposes of collective bargaining or other matters concerning employees who are their members. It is akin to a memorandum of agreement or contract between the union and the employer granting the former the right to negotiate on issues concerning their members in the employ of the organization.

7. Union membership is on the other hand regulated by the respective union's constitutions. They define and describe what the union can do on behalf of their members. The Employment and Labour Relations Court Act, the Labour Relations Act and the rules of the Court permit unions to file and prosecute claims on behalf of their members. Recognition is for purposes of collective bargaining and not union representation generally.

8. The same way advocates have the right of audience before the Court so are union officials. There is therefore nothing unlawful for the union to bring action on behalf of their members in the event of a dispute between such employees and their employer.

9. The Court therefore finds and holds that the Union has the locus standi to bring the present action. The objection is therefore overruled.

10. It is so ordered.

Dated at Nairobi this 17th day of June 2016

Abuodha Jorum Nelson

Judge

Delivered this 17th day of June 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha Jorum Nelson

Judge