

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1704 OF 2014

KENYA SHIPPING, CLEARING AND WAREHOUSES WORKERS UNION.....CLAIMANT/
RESPONDENT

VERSUS

WILHAM KENYA LIMITED.....RESPONDENT/
OBJECTOR

RULING

1. The Respondent raised a preliminary objection to the effect that the Claimant had no *locus* to bring the claim as presented. The Respondent's submissions filed on 20th November 2015 were that the Claimant was not registered to recruit members in two different sectors. The Respondent submitted that the Claimant has no capacity to represent the employees of the Respondent as they are not members of the Union and that the Claimant had no mandate to represent workers in the food processing industry. Reliance was placed on the case of **Communication Workers Union & Another v Communications Authority of Kenya [2015] eKLR**.
2. The Claimant responded vide submissions filed on 23rd November 2015 and stated that the objection failed to elaborate as to how the Claimant lacks *locus* to bring the claim herein. It was submitted that the Claimant is duly mandated to represent, act, mediate and encourage employees to enter into better terms of employment or stand in between the employers and employees whenever disputes arose at the work place. The Claimant submitted that it had brought the claims specifically within the bill of rights, to wit, Article 41 of the Constitution and Section 4 of the Labour Relations Act 2007. The Claimant submitted that there is no proof that the Respondent is not an exporter. The Claimant stated that the objection lacks merit and is in bad faith.
3. In matters relating to preliminary objection, the *locus classicus* is the case of **Mukisa Biscuit v West End Distributors Ltd [1969] E.A. 696**. In the case, Law J.A. stated a preliminary objection to be thus:-

“So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

Sir Charles Newbold, President stated thus in the same judgment:-

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is 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.”

4. The Respondent has objected to the suit on the basis that the Claimant does not have *locus standi* to bring the suit. **Black's Law Dictionary Ninth Edition** defines *locus standi* as **the right to bring an action or be heard in a given forum**. Literally, the phrase *locus standi* is Latin for place of standing. The Respondent thus means that the Claimant lacks the capacity to bring the

action or be heard in this forum. The basis for this objection is that the Claimant does not represent the interests of workers in the Respondent's line of business as the Claimant is to represent workers in the shipping, clearing, import and export sector and not food processing. The Claimant on its part asserts that there is no proof that the Respondent does not engage in activities covered by the Claimant. In the case cited, the holding of Newbold P. is instructive. He held that a preliminary objection must be an objection that raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct and that it cannot be raised if any fact has to be ascertained. Before me, there is an allegation that the Respondent has no business in the export, import, shipping, clearing or warehouse sectors. The Claimant asserts that the Respondent is engaged in the sector it represents. That issue has to be ascertained as facts have to be gone into and proof availed of the sector, whether the Claimant and the Respondent have confluence and so on. To my mind, it is clear that the objection taken is misplaced as the issue raised which was expressed plainly that the Claimant had no *locus* to bring the claim as presented does not hold. The objection requires facts to be ascertained and therefore does not meet the threshold of a preliminary objection. It has clouded the dispute before the Court and has not led to a speedy determination of the issues before the Court for arbitration. That said, Article 41 is not *carte blanche* for any person to assert that they are articulating the interests of labour in any given sector. Clearly, the issue must be resolved by the trial Court since the inquiry will have to be made as to whether the Claimant union has the capacity to represent workers in the Respondent's business. The preliminary objection is dismissed with costs being costs in the cause.

Orders accordingly.

Dated and delivered at Nairobi this 13th day of July 2016

Nzioki wa Makau

JUDGE