



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT OF KENYA AT NAIROBI
CAUSE NO. 120 OF 2016

RIFT VALLEY RAILWAYS

WORKERS UNION CLAIMANT

VERSUS

BUILDING AND CONSTRUCTION

WORKERS UNION 1ST RESPONDENT

CHINA ROAD AND

BRIDGE CORPORATION 2ND RESPONDENT

AND

KENYA RAILWAYS CORPORATION 1ST INTERESTED PARTY

CENTRAL ORGANISATION

OF TRADE UNIONS (K) 2ND INTERESTED PARTY

RULING

1. The 1st respondent raised a preliminary objection to this suit dated 5th February 2016 and filed on the even date to wit;
2. That the honourable court has no jurisdiction to determine this cause as it is prematurely before it.
3. That the cause offends the provision of part VIII and IX of the Labour Relations Act of 2007.
4. At the same time the 2nd respondent filed a notice of preliminary objection on the same date, the 5th February 2016 set out in paragraphs 1 to 5 of the notice;

1. That the claim seeks to infringe upon the constitutional rights of the 2nd respondent's employees

to join trade union of their choice and participate in its activities by dint of Article 41 (2) (c) of the constitution.

2. The claimant's suit if entertained by this honourable court shall be an attempt at infringing the 2nd respondent's employees' freedom of association as envisaged under Article 36 (1) and (2) of the constitution.

3. The subject matter of the claim was resolved by conciliation as prescribed by the Labour Relations Act under sections 67 and 68 and a binding decision reached on 8th January 2015. The decision was in writing and was addressed to the claimant and the 1st respondent.

4. The claimant does not meet the simple majority requirement under Section 54 (1) and (2) of the Labour Relations Act to warrant recognition by the 2nd respondent as the representative of the 2nd respondent's employees' interests.

5. Having failed to meet the simple majority threshold as required by the Labour Relations Act, the claimant lacks the *locus standi* to represent the interests of Mr. Stephen Chege on claims of his dismissal for being its member which claims are, without prejudice to the aforementioned, unsubstantiated.

5. The court having carefully considered the objections and upon consideration of the submissions by the parties has arrived at the conclusion that the points raised by the 1st and 2nd respondents against the suit are not pure points of law that may be determined without delving into the facts of the suit.

6. The court relies on the case of *Mukisa Biscuit Manufacturing Co. Ltd V West End Distributors Ltd. [1969] EA 696* to find that the notices of preliminary objections are not pure points of law and do not deserve consideration at the preliminary stage.

7. The suit shall proceed to full hearing on the merits.

Dated and delivered at Nairobi this 5th day of August, 2016

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE