



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 1022 OF 2012

VINCENT EDWARD NJOROGI

PHILIP OPANGA OTENYO

RONALD KAMPA LUGABA

*(Suing on their own behalf as well as on behalf of other employees of
KENOL KOBIL LTD).....CLAIMANTS*

V

KENOL KOBIL LTD.....RESPONDENT

RULING

1. This ruling flows from the Respondent's application brought by way of Notice of Motion dated 13th November 2012 seeking orders to strike out the Claimant's claim. The application which is supported by the affidavit of David Ohana sworn on 12th November 2012 is based on the following grounds:

- a. That the case as presented is null and void in law as the named Claimants have no capacity in law to bring a class action on behalf of the employees of the Respondent;
- b. That under the Labour Relations Act, 2007 and the Employment Act, 2007 class interests and class rights in employment matters are conferred upon and protected by Trade Unions which have the mandate to commence legal action in this Court to protect class rights or interests in the event of a breach;
- c. That Article 50 of the Constitution of Kenya, 2010 requires the Court to determine disputes between parties, and in the instant case there is no dispute between the Respondent and all its employees as alleged in the suit;
- d. That the Court has been misled by the Claimants that there is a dispute between the Respondent and all its employees;
- e. That the case as presented is a fraud on the Court and a gross abuse of the Court process;
- f. That the case as presented violates the Respondent's right to a fair hearing under Article 50 of the Constitution;

- g. That the case as presented is in breach of the provisions of the Employment Act, 2007 and the Labour Relations Act, 2007;
- h. That the case ought to be dismissed to ensure efficiency and integrity of the proceedings to protect the rights of the Respondent and the dignity and authority of the Court;
- i. That neither the subject matter of this suit nor any application therein can be disposed of prior to the determination of this application which goes to the jurisdiction of the Court and/or the capacity of the named Claimants to institute the present proceedings.

2. In a replying affidavit sworn by Vincent Edward Njoroge on 21st November 2012, it is deponed that the suit herein was filed by employees of the Respondent in order for their employment rights to be ascertained before, during and after the takeover of the Respondent by PUMA Energy.

3. By an application dated 15th June 2012, the Claimants sought leave to institute a representative suit for and on behalf of all employees of Kenol Kobil Co Ltd. Filed in support of this prayer were samples of letters of authority signed by the employees authorizing the employee representatives to act on their behalf. The Claimant's prayer was allowed by consent on 20th June 2012 before **Kosgey J.**

4. The Claimants had since been acting on behalf of all other employees pursuant to the consent entered between the parties. According to the Claimant an alteration of the consent order can only be contemplated in a review or appeal but not by the current application.

5. Njoroge further depones that the Claimants had never purported to act as a trade union and the provisions of the Labour Relations Act, 2007 were therefore inapplicable. With regard to the affidavits and other documents signed by some employees to the effect that the Claimants did not represent their interests, Njoroge depones that these documents were procured by duress.

6. The Claimants assert that the documents that authorised them to bring this action were obtained from employees of the Respondent who willingly signed the documents without any form of pressure or undue influence.

7. Further, the suit herein was commenced owing to the breach of the Claimants' right to fair labour practices enshrined in Article 41 of the Constitution. Moreover Article 22(2)(b) of the said Constitution empowers any person to institute court proceedings as a member of, or in the interest of, a group or class of persons.

8. The Respondent's application is based on Section 12 of the Industrial Court Act which sets out the jurisdiction of this Court to deal with employment and labour relations matters. Mr. Oyatsi, Counsel for the Respondent told the Court that as far as employment matters are concerned, the jurisdiction of the Court is limited to determination of disputes between an employer and an employee, adding that only a trade union could bring a representative suit on behalf of a group of employees who are covered by a Collective Bargaining Agreement. According to Counsel therefore, the Court has no jurisdiction to entertain the Claimants' claim which is brought on behalf of a group of employees.

9. The question then is whether, employees who are not members of a trade union under collective bargaining can legitimately bring a joint claim against a single employer. Rule 9 of the Industrial Court (Procedure) Rules provides for institution of a representative suit by an employee on their own behalf and on behalf of others while Rule 23 allows for consolidation of cases with a similar subject matter. These provisions are as clear as can be and the Court finds no legal basis for the path taken by the Respondent in this application.

10. Further, the representative suit filed by the Claimants was in fact sanctioned by a consent

order recorded in Court on 20th June 2012. It is settled law that a consent order has contractual effect between the parties and can only be set aside on the same grounds that would invalidate a contract being; fraud, misrepresentation, misapprehension of material facts or contravention of written law (see *Brooke Bond Liebeg (T) Ltd Vs Mallya [1975] EALR* and *Gerishon Likechi Kitungulu Vs Patel Prabhakar Isuer Bhai [2005] eKLR*).

11. The only issue raised by Counsel for the Respondent in this regard is that the representative suit filed by the Claimants is in contravention of Section 12 of the Industrial Court Act which grants jurisdiction to this Court to deal with employment and labour relations matters. I hold a different view. My reading of Section 12 which is buttressed by Rules 9 and 23 of the Industrial Court (Procedure) Rules does not reveal any bar to representative suits. I therefore find the Respondent's application to be without basis and proceed to dismiss it with costs to the Claimants.

Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT NAIROBI THIS 20TH DAY OF JANUARY 2015

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JUDGE

Appearance:

Mr. Change for the Claimants

Mr. Oyatsi for the Respondent