



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT KISUMU
CAUSE NO. 276 OF 2014

(Before Hon. Lady Justice Maureen Onyango on 10th April, 2015)

UNION OF NATIONAL RESEARCH INSTITUTES

STAFF OF KENYA (UNRISK)CLAIMANT

-VERSUS-

KENYA SUGAR RESEARCH

FOUNDATION (KESREF) 1ST RESPONDENT

KENYA AGRICULTURAL AND LIVESTOCK

RESEARCH ORGANISATION (KALRO)..... 2ND RESPONDENT

RULING

By a Notice of Motion dated 26th November 2014 and filed on 2nd December 2014 by the respondents through Milimo, Muthomi & Co. Advocates the respondents seek the following orders:-

1. That the claimant's claim as against the 1st respondent be and is hereby struck out with costs.
2. That this cause No. 276 of 2014 be and is hereby transferred to the Industrial Court of Kenya at Milimani/Nairobi for hearing and or determination.
3. That this cause be and is hereby consolidated with Industrial Cause lodged and registered as Nairobi Cause No. 1272 of 2014 - Union of National Research and Allied Institutes Staff of Kenya -Vs- Kenya Agricultural Research Institute and Kenya Agricultural and Livestock Research Organization.
4. That costs of this application be borne by the claimant.

The application is supported by the affidavit of Dr. Eliud Kireger and the following grounds:-

- i. The 1st respondent was an institution established pursuant to the Provisions of the Science and Technology Act, Cap 250 Laws of Kenya.
- ii. By virtue of the Provisions of the Kenya Agricultural and Livestock Research Act, 2013, the 1st respondent was proposed to be dissolved.
- iii. The relevant provisions of the Kenya Agricultural and Livestock Research Act, 2013 came into effect on 1st July, 2014 effectively rendering the 1st respondent abolished and or no-existent.
- iv. The claimant herein did institute this proceedings on 13th October, 2014 well aware that the 1st respondent was non - existent.
- v. This claim as filed against the 1st respondent and sought to be pursued and or maintained as such is therefore legally and factually unsustainable. Prayer 1 of the instant application seeks to provide a remedy to the claimant's cause.
- vi. The 2nd respondent herein, as established under the Provisions of the Kenya Agricultural and Livestock Research Act, 2013 Research Act, 2013 (hereinafter referred as "KALRA"), has its Board and Secretariat based at its offices situate at Kaptagat Road, Loresho, Nairobi (former Kenya Agricultural Research Institute (KARI) Headquarters), a fact well known to the claimant.
- vii. The claimant herein has its office situated and based at Rainbow Plaza, Museum Hill, Nairobi.
- viii. The conciliation meeting(s) between the parties had its venue at NSSF Building, Nairobi.
- ix. The law firm appointed to represent the respondents in this matter are based at Agip House, Nairobi.
- x. All the parties who shall be principal players in this litigation are based in Nairobi.
- xi. It is in the wider interests of justice, mitigation of litigation costs and or expenses and the convenience of all parties that the entire cause herein be transferred to Nairobi Industrial Court for hearing and or determination.
- xii. The claimant herein has also instituted proceedings, essentially against the 2nd respondent herein at Nairobi, in Nairobi Industrial Cause No. 1272 of 2014 which was filed on 1st August, 2014 (hereinafter referred to as the previous suit).
- xiii. The previous suit and the instant suit involves same parties and is bound to raise similar and common and or substantially similar and common set of issues of both law and fact for determination.
- xiv. It is in the interest of the Judicial scarce precious time and resources that the previous suit and suit herein be consolidated, heard and determined in one forum which eventuality shall also ensure that the principle of expeditious disposal of disputes is observed and avoid possibility of conflicting decisions from court of concurrent jurisdiction over a similar or substantially similar and or related issue(s).
- xv. No prejudice shall be suffered by either party if the orders sought herein are granted.

In the supporting affidavit sworn on 26th November 2014 Dr. Eliud Kireger depones that he is the Acting Director General of the 2nd respondent, an institution established under the Kenya Agricultural and Livestock Research Act 2013. That the 1st respondent which was established under the provisions of the Science and Technology Act, Cap 250 ceased operations and became non - existent upon the

establishment of the 2nd respondent which took over its operations and functions. That this case is similar to Nairobi Industrial Court Cause No. 1272 filed by the claimant against the 2nd respondent. He further depones that the 2nd respondent's offices are situated in Nairobi at Kaptagat Road, Loresho (formerly Kenya Agricultural Research (KARI) Headquarters. That the claimant's offices are also in Nairobi at Rainbow Plaza, Museum Hill Nairobi. He also depones that conciliation meetings were held in Nairobi and further that the respondent's advocates are also in Nairobi. That it would be in the wider interests of justice, mitigation of litigation costs and convenience of all parties for the suit to be transferred to Nairobi for hearing and determination as all the parties are based in Nairobi. He further depones that it would be in the interest of judicial time and resources to have this case consolidated with Nairobi Cause No. 1272 of 2014 which involves the same parties and the same cause of action and that no prejudice would be suffered by any party if the prayers sought in this application are granted.

The claimant filed a reply and grounds of opposition to the application on 30th January 2015 on the grounds that this court has jurisdiction to try this case under the devolved system of the court and that the issues in dispute are different as they relate to agreements for different periods.

The parties were directed to argue the application by way of written submissions which they both filed.

In the submissions the respondent/applicant submitted that the description of parties in Nairobi Cause No. 1272 is similar to the description of the parties under this case, and that the pleadings and final prayers are also the same. That the 1st respondent was absorbed by the 2nd respondent on 1st July 2014 while this suit was filed on 13th October 2014 when the 1st respondent had ceased to exist.

The respondents relied on Section 15 of the Civil Procedure Act which provides for geographical or territorial jurisdiction of courts. The respondent further relied on the decision of **Justice J. B. Havelock** in Nairobi Civil Case No. 711 of 2012; **Samuel M. W'njuguna V Benjamin Achode and Others** [2013] eKLR in which the judge stated as follows:-

"The provisions of Order 47 rule 6(2) clearly allow the court of its own motion or on the application of any party to order that the case be tried in a particular place to be appointed by the court. From the authorities put before this court by the parties and, more particularly, taking into account the proviso to order 47 rule 6(2), it falls to this court to determine the place of trial which should be to the convenience of the parties and their witnesses and all other circumstances of the case.

.... It is plainly obvious to this court that the large majority of the shareholders of the company are based in Mombasa ...Accordingly, this court directs, of its own motion, that this file be transferred to the District Registry at Mombasa"

The respondent's prayed that the application be granted.

The claimant through Zacharia Achacha, the Secretary General filed an affidavit sworn on 23rd February 2015 in which he states that the 1st respondent has not been disbanded or abolished as the transfer from the 1st to the second respondent was to be concluded within a year which would be in July 2015. He further deponed that the 1st respondent is situated in Kisumu and its Collective Bargaining Agreement (CBA) was valid upto 30th June 2014 which was before the 2nd respondent came into being.

I have considered the pleadings, the affidavits and rival submissions by both parties.

There is no dispute that there are 2 cases filed by the claimant against the respondent both of which are on terms and conditions of service. These are the present suit and Nairobi Industrial Court Cause No. 1272 of 2014.

There is also no dispute that the 2nd respondent is by virtue of the transitional provisions of the Kenya Agricultural and Livestock Act 2013 expected to take over all rights, obligations and contracts of the 1st respondent including the staff of the 1st respondent. The relevant provisions are contained in Part IX of

the Kenya Agricultural and Livestock Research Act, 2013 at Sections 51, 52, 53, 54, 55, 56, 57 and 58.

It is also not in dispute that the Kenya Agricultural and Livestock Research Act came into force on 1st July 2014 by virtue of Legal Notice No. 99 of 11th July 2014. Section 53(5)(d) of the Kenya Agricultural and Livestock Research Act provides for the transfer of the institutions to be absorbed by the 2nd respondent within one year from the coming into operation of the Act.

The CBA sought to be determined in this case is for the period 1st July 2012 to 13th June 2013 while the one sought in Cause No. 1272 of 2014 is to be effective from 1st July 2013 for a period of two years, to 30th June 2015. This means that the two suits are for two consecutive CBA's. There is therefore merit in the two suits being consolidated to avoid a situation where the two awards may create a clash in the two collective agreements if determined by two different courts. It would also save time and expenses for both parties if the two cases are heard in Nairobi as all the parties and their representatives operate from Nairobi.

Regarding the 1st prayer in the application that the claim against the 1st respondent be struck out with cost I find that the 1st respondent has been properly sued as both claims cover the period before its absorption by the 2nd respondent. It was thus prudent for the claimant to sue both respondents to avoid a situation where the 1st respondent is absorbed by the 2nd respondent during the pendency of the suit.

For the foregoing reasons I decline to order the striking out of the suit against the 1st respondent.

I however order that this case be transferred to the Industrial Court sitting in Nairobi to be consolidated with Nairobi Cause No. 1272 of 2014. Parties are directed to mention this case within 30 days in Nairobi together with Nairobi Cause No. 1272 of 2014 for purposes of consolidation and directions for fixing of hearing date.

MAUREEN ONYANGO

JUDGE

10/4/2015

Appearances:-

.....for the claimant(s)

.....for the respondent(s)

CC. Wamache