



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

CAUSE NO. 587 OF 2014

KENYA UNION OF PRINTING, PUBLISHING, PAPER

MANUFACTURERS & ALLIED WORKERS

CLAIMANT

v

HIGHLANDS PAPER MILLS LIMITED

RESPONDENT

RULING

1. Harnest Benard Nyangweso (deceased) was employed by Highlands Mills Ltd (Respondent) on 1 March 1994 as a general worker and he later on rose the position of boiler operator.
2. Unfortunately he died on 28 October 2009 while still in the employment of the Respondent.
3. It appears that the Kenya Union of Printing, Publishing, Paper Manufacturers & Allied Workers took up the question of payment of the deceased final dues with the Respondent and the matter ended up for conciliation but no resolution was reached.
4. The Conciliator issued a Certificate of Disagreement on 27 November 2013 after the Respondent failed to pay some Kshs 62,393/- which it had agreed through its letter dated 25 October 2013 were the final dues payable to or on behalf of the deceased.
5. The Union consequently moved Court on 14 November 2014 seeking the final dues on behalf of the widow and children of the deceased.
6. The Respondent was served with the Memorandum of Claim and it filed a Response and Notice of Preliminary Objection on 9 November 2015.
7. The preliminary objection is the subject of this ruling.
8. The objection as taken is rather straightforward and it is that the Cause is incompetent because it was filed long after the passing on of the deceased, and without and before grant of letters of administration.
9. According to the Respondent, the Union had no legal capacity to bring the Cause on behalf of the deceased. Further, the Respondent urged that the dues could only be paid to a legal representative of the deceased.
10. The Respondent made reference to section 24 of the Employment Act, 2007.
11. The facts as presented are not in dispute.
12. The Cause before Court is incompetent in that such a claim can only be commenced and agitated by a legal representative duly authorised by a competent Court of law. There was no demonstration that a grant had been issued.
13. The Cause is therefore for rejection.
14. In the course of taking up of the objection, the parties with the prodding of the Court engaged on a humane way of dealing with the issue of the deceased dues which the Respondent had calculated and advised the Conciliator it was willing to pay, and the Court only hopes that Mr. Ochang will find it in his heart to engage with his client (the Respondent) on a way to resolve the issue as the cost of applying for the letters of administration may be higher than the dues payable.

