



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO 948 OF 2012

KENYA PETROLEUM OIL WORKERS UNION..... CLAIMANT

VS

MESORA SUPERMARKET LIMITED

(KENOL MESORA PETROL SERVICE STATION).....1ST RESPONDENT

KENOL KOBIL LIMITED.....2ND RESPONDENT

RULING

1. By a Memorandum of Claim dated 5th June 2012 and filed in Court on even date the Claimant sued the 1st and 2nd Respondents for failure to pay redundancy dues to David Githinji Wahito, the Grievant herein. The 2nd Respondent filed a Statement of Defence on 6th July 2012 and the 1st Respondent filed a Memorandum of Reply on 20th May 2013.

2. When the matter came up for hearing on 22nd May 2013, there was no appearance for the 2nd Respondent. Subsequently Mrs. Effendy, Counsel for the 2nd Respondent appeared before me on 24th June 2013 and notified the Court that the 2nd Respondent had not been served with a hearing notice for 22nd May 2013. I therefore granted leave to the 2nd Respondent to file a formal application for orders to set aside the proceedings to allow the matter to begin *de novo*.

3. The 2nd Respondent's application was heard on 23rd September 2013 with Mr. Obure appearing for the Claimant, Mr. Ambenge for the 1st Respondent and Miss Kilemi holding brief for Mrs. Effendy for the 2nd Respondent. Apart from the issue of non service on the 2nd Respondent, Counsel for the 2nd Respondent submitted that the 2nd Respondent was improperly joined in this case. The Court therefore directed the parties to take instructions on the issue of joinder of the 2nd Respondent. While agreeing that the 2nd Respondent was not properly joined in this case, the Claimant and the 2nd Respondent differed on the issue of costs. On its part, the 2nd Respondent asked for costs from the Claimant but the Claimant was of the view that each party should bear its costs. This ruling therefore relates to the issue of costs.

4. Section 12(4) of the Industrial Court Act, 2011 provides that:

“In proceedings under this Act, the Court may, subject to the rules make such orders as to costs as the Court considers just.”

5. Rule 27(1)(e) of the Industrial Court (Procedure) Rules, 2010 provides that:

“Provided that subject to these Rules and any other written law, the Court may at any time in the conduct of proceedings issue-

(e) an order for costs”

6. The award of costs in proceedings before the Industrial Court is discretionary and discretion must always be exercised judiciously. The documents submitted by the Claimant in support of the Grievant's case establish an employment relationship between the Grievant and the 1st Respondent. The only mention of the 2nd Respondent has to do with the dealership agreement with the 1st Respondent to which neither the Claimant nor the Grievant were privy. I therefore find no reason for joiner of the 2nd Respondent in these proceedings in the first place.

7. Apart from a general statement by the Claimant that each party bears its own costs, there were no submissions made as to why the Court should exercise discretion in favour of the Claimant. I therefore direct that the Claimant shall meet the costs incurred by the 2nd Respondent up to this point. The costs will be assessed by the Deputy Registrar in the normal manner.

Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 21ST DAY OF JANUARY 2014

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JUDGE

In the Presence of:

.....*Claimant*

.....*1st Respondent*

.....*2nd Respondent*