



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA**

**AT MOMBASA**

**CAUSE NO. 257 OF 2013**

**K.U.D.H.E.H.I.A (Kenya Union of Domestic Hotels, Education Institution, Hospital and Allied Workers).....CLAIMANTS**

**VERSUS**

**PAPILION LAGOON REEF .....RESPONDENTS**

**R U L I N G**

Before the Court is a Preliminary Objection (P.O.) filed by the defence on 18/10/2013. It is based on the following grounds.

- a. **The suit is premature and bad in law as it was filed before conciliation was done in accordance with Section 62,64 and 65 of the Labour Relations Act**
- b. **there is duplicity of suit on the same dispute because the grievants herein have filed another suit No. 109 of 2012 directly without using their union and the suit is pending ruling.**

The defence therefore prays that the suit be struck out with costs. The P.O. was prosecuted by madam Moonraj learned counsel for the defence and was opposed by Mr. Thuita who appeared for the claimant.

**DEFENCE SUBMISSIONS**

The defence counsel submitted that when this dispute was reported to the Minister for Labour, conciliation was done whereat the claimant gave a list of the grievants she was representing. After the conciliation, some of the grievants filed their case in court without involving the union. While that suit was pending, the claimant filed the present suit in her name and on behalf of her members including those who had already filed their separate suit. She prayed for the P.O to be allowed.

In response, to this P.O the claimant amended her list of the grievants whose effect was to increase the members even after deleting some of the grievants who had their separate suit. Consequently, the defence submits that it is not able to defend the suit effectively because the claimant does not know who she is representing in the suit.

On the second point the defence submitted that the names in the new list of the grievants, whose names were not part of the conciliation cannot be completely represented by the claimant in the present suit. According to the defence the Labour Relations Act (LRA) requires that before grievants bring a suit to court through their union, conciliation must first be done. Consequently, the claims for the new names in the list of grievants are incompetent for non compliance with the mandatory requirement of conciliation.

## **CLAIMANTS SUBMISSIONS.**

Mr. Thuita in response submitted that the list of 50 grievants was served on the defence on 10/1/2012 during the conciliation. That the conciliation for the 50 grievants proceeded but later 18 of them filed a suit in court without involving the union. Subsequently the claimant filed this suit with 39 grievants because she was not sure about the rebel grievants who went to court on their own. That when this P.O. Was raised the claimant deleted the rebel grievants from her list of grievants and filed a fresh list of 44 grievants. That the said list was in line with the names in the memorandum of Reply by the respondent. On the issue of procedure, he submitted that the claimant complied with Section 62 of the LRA by going to conciliation before filing this suit. That during the said conciliation the claimant represented all the unionisable staff. He prayed for the P.O. to be dismissed.

## **ANALYSIS AND DETERMINATION**

The court has perused the pleadings and considered the submissions made for the two parties. Two issues arise for determination:

- 1. whether there is duplicity of suits filed by the same parties before this suit.**
- 2. Whether this suit is procedurally incompetent for having been filed before conciliation and the LRA.**

### **Duplicity of Suits.**

As clearly stated under the second ground of the P.O. some of the grievants in this suit had earlier filed their own suit without involving the claimant. They did not instruct the claimant to include them in the present suit. They are therefore not to blame for the second suit. The claimant submitted that initially she acted for all the unionisable employees of the respondent and she was not sure who had filed the other suit. She however corrected the error by deleting their names.

The court is of the view that there was no dishonesty on the part of the claimant who possibly had not seen the proceedings filed by the rebel grievants before filing this suit. Consequently the said error is curable by amendment with a view to excluding the grievants who have filed a separate suit. That should be done immediately before the suit can go to full hearing.

### **Is the suit procedurally incompetent**

The defence believes that the suit for the grievants who were not in the initial list filed during conciliation is incompetent. On the other hand the claimant believes that the conciliation was not only for the grievants in the list served during the conciliation but also for the unionisable staff. The two arguments are valid. A suit filed by a union in her own name on behalf of her members must have undergone conciliation under Section 62 of the LRA. That is what Section 73 of the LRA means.

It is also true that in certain disputes like the present one, a trade union needed not mention the names of all the grievants. The nature of the dispute before the conciliator and now before this court involves disagreements on terms and conditions of service in a CBA and failure to comply with terms provided under a previous CBA including the issue of housing. There is no claim for any specific damages for specific person. The court will therefore not strike out the suit.

## **DISPOSITION**

For the reasons stated above the P.O is dismissed without costs.

**Signed Dated and delivered this 24<sup>th</sup> day of February 2014**

**O. N. Makau**

## Judge