



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT MOMBASA

(BIMA TOWERS)

CAUSE NO. 148 OF 2013

AMALGAMATED UNION OF KENYA METAL WORKERS

CLAIMANT

v

CENTRAL ELECTRICAL INTERNATIONAL LTD

RESPONDENT

and

KENYA BUILDING, CONSTRUCTION, TIMBER AND

FURNITURE INDUSTRIES UNION

INTERESTED PARTY

RULING

1. Before Court is a Notice of Motion dated 16 September 2013 by the Respondent under sections 3(1) and (2), 12(3)(viii) of the Industrial Court Act and rule 16(1) of the Industrial Court (Procedure) Rules, 2010 seeking an order, that the suit herein be transferred to the Industrial Court of Kenya in Nairobi. The motion is supported by the affidavit of Scaver Mwakulomba and 7 grounds which appear on the face of the motion.
2. The Claimant Union opposed the application and relied on the Replying Affidavit of its General Secretary Justus Maina Otakwa sworn on 1 October 2013.
3. Before delving on the application, I need to note that the Memorandum of Claim was filed in Court on 13 June 2013 and the issue in dispute was stated as

refusal by management to accord the claimant the Recognition Agreement, to deduct & remit union dues and victimizing by coercing and or forcing union members to withdraw.

4. The Respondent was served and it filed a Memorandum of Reply on 1 July 2013 in which it raised the issue that the Claim ought to have been filed before the Industrial Court in Nairobi rather than Mombasa.
5. It was also pleaded there was another rival union and that a conciliation process with that Union had been finalised and a report released. The report dated 30 April 2013 recommended that the Interested party be accorded recognition by the Respondent.
6. Other preliminary points of law were raised but the Court will not consider them at this juncture because the parties did not address these points of law.
7. The rival Union, Kenya Building, Construction, Timber and Furniture Industries Employees Union had on 31 July 2013 filed an Interested Party's Memorandum of Reply and Counter Claim pursuant to an order made by the Court on 2 July 2013.
8. The grounds upon which the motion are grounded and which were urged by the Respondent in

- submissions were briefly, that the Respondent's head office is in Nairobi; it would be costly to defend the Cause in Mombasa; the Claimant Union and Interested party are based in Nairobi; the trade dispute was under conciliation in Nairobi and that it was in the interest of justice to transfer the matter to Nairobi.
9. The supporting affidavit of Scaver Mwakulomba in many respects deposed on similar terms to what were set out on the face of the motion save that it was further deposed that the majority of the Respondent's employees were based in Nairobi with only about 94 employees being based in Mombasa.
 10. The Claimant's Union General Secretary in the Replying Affidavit, deposed that the Cause ought to be heard and concluded without delay; that hearing dates were not readily available in Nairobi; that the majority of Respondent's employees were in Mombasa; that the issue of costs was not raised earlier; that the Cause could be dealt with through written submissions; that recognition agreement disputes should be heard urgently and that the application was made in bad faith.
 11. Section 3 of the Industrial Court Act provides for the principal objective of the Act which is to enable the Court to facilitate the just, expeditious and proportionate resolution of disputes while section 12(3)(viii) of the Act empowers the Court to grant such appropriate relief as justice may demand. Rule 16 of the Industrial Court (Procedure) Rules, 2010 provides the method for moving the Court in interlocutory applications.
 12. The Industrial Court Act and the Industrial Court (Procedure) Rules, 2010 have not made any provision for territorial or geographical jurisdiction of the Industrial Court or the judges. It has also not made provision for place of suing/filing of Causes like has been done in sections 12 to 18 of the Civil Procedure Act.
 13. Although the Industrial Court is a specialist court, in my view because of the lacuna relating to prescriptions as to place of suing, the legal principles which have been developed within the civil procedure framework should be applicable with such modifications as may meet the principal objective of the Industrial Court Act.
 14. The question of costs to both parties should also be a relevant consideration and should be considered together with the principal objective of the Act. Judicial economy would be another relevant factor.
 15. Because the Respondent raised the issue at the very earliest opportunity in its Memorandum of Reply, it cannot be said that the application is/was meant to defeat the principal objective of the Industrial Court Act.
 16. The Labour Relations Act has expressly provided that disputes relating to recognition agreements should be heard urgently and therefore the position urged by the Claimant Union about lack of hearing dates has an answer in the Statute and the Union should be in a position to bring to the attention of the Registrar/ Court in Nairobi that such application or dispute should be disposed off as required by the Statute.
 17. Before concluding the Court must note that the unionisable employees of the Respondent have been delayed or prevented from the enjoyment of their Article 41 of the Constitution right to join and participate in the activities and programmes of a trade union of their choice because of unwarranted squabbles between two unions as to which is the proper union, a dispute which does not require the skills of Hercules to resolve.
 18. Further, recognition agreements are usually resolved on the basis of pleadings and submissions without resort to oral testimony.
 19. In the circumstances, the order which commends itself to me is to allow the Motion dated 16 September 2013 by ordering that the Cause herein be heard and disposed of before the Industrial Court in Nairobi.
 20. Consequently the file should be transmitted to Nairobi to be mentioned for further directions before the Principal Judge on 10 April 2014. There is no order as to costs.

Delivered, dated and signed in open Court in Mombasa on this 21st day of March 2014.

Radido Stephen

Judge

Appearances

Mr. Makale, Industrial Relations Officer

Amalgamated Union of Kenya Metal Workers for Claimant

Mrs. Roita for Respondent

Mrs. Roita h/b for Ms. Chege for Interested Party