



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA**  
**AT NAIROBI**  
**CAUSE NO. 1524 OF 2011**

**GRACE WANJIKU MBURU .....1<sup>ST</sup> CLAIMANT**  
**EDWARD GITHUTWA.....2<sup>ND</sup> CLAIMANT**  
**GILBERT ATORI.....3<sup>RD</sup> CLAIMANT**  
**WILLIAM NDUNGU MACHARIA.....4<sup>TH</sup> CLAIMANT**  
**NICHOLAS MUTISO.....5<sup>TH</sup> CLAIMANT**  
**ENOCK NYAMASEGE.....6<sup>TH</sup> CLAIMANT**

**SUING ON THEIR OWN BEHALF AND ON BEHALF OF 89 OTHERS**

**VERSUS**

**KENATCO TAXIS LIMITED.....RESPONDENT**

**RULING**

1. The Respondent sought by way of preliminary objection to determine the suit *in limine* arguing that the Claimants ought to have sued the receiver manager and after obtaining leave to commence the suit from the High Court.
2. The preliminary objection was canvassed before my predecessor Hon. Kosgey on 16<sup>th</sup> May 2012 and he stated that the Ruling would be delivered on Notice. Mr. Obura revived the issue on 27<sup>th</sup> January 2014 and seeks the Ruling to be delivered.
3. In the submission made, the Respondent's counsel urged that the Claimants commenced a suit against a company under receivership and should have sued the Receiver Manager and that the suit was instituted without the leave of the High Court.
4. Under Part VIII of the Employment Act 2007, the procedure to be followed in seeking redress against an employer that has gone under receivership or bankruptcy is set out. It is clear that any judicial process against an insolvent employer must follow the dictates of the law. Under the Companies Act, there are elaborate steps to be taken for the commencement of a suit against a company under receivership. The suit was filed on 8<sup>th</sup> September 2011. The Court has considered the plethora of authorities and legal writings on the issue of insolvency. I cannot depart from the law. There is no cause of action that can lie against a company under receivership without leave being obtained by the Claimants. Indeed their claim is one to which Part VIII of the Employment Act 2007 applied.
5. I uphold the preliminary objection raised and dismiss the entire suit against the Respondent. I will award the Respondent the costs as well as they ought not have been sued without leave of Court.

Orders accordingly.

**Dated and delivered at Nairobi this 19<sup>th</sup> day of March 2014**

**Nzioki wa Makau**

**JUDGE**