



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT KISUMU

CAUSE NO. 54/2013

(Before Hon. Justice Hellen Wasilwa on 14th March, 2014)

GEORGE ONYANGO OCHIENG CLAIMANT

-VERSUS-

CHEMELIL SUGAR COMPANY LTD RESPONDENT

R U L I N G

The application before court is the one dated 4.10.2013 filed by the respondent applicants herein seeking orders that:-

- 1. This suit be struck out or dismissed for lack of jurisdiction.**
- 2. That the costs of this application be provided for in favour of the respondent applicants.**

The application is filed through a notice of motion and brought under Sections 1(a), (b), 3, 3A of the Civil Procedure Act, read together with order 2, Rule 13, order 51 rule 1 of the Civil Procedure Rules and other enabling provisions of law.

The application is premised on the grounds that:-

- 1. This court has no jurisdiction under Section 87 (1) of the Employment Act 2007 and Section 12 of the Labour Institutions Act 2007 to hear and determine the issues raised herein.**
- 2. That the suit is an abuse of the due process of this court and the same ought to be struck out and/or dismissed with costs to respondents.**

The application is also supported by the supporting affidavit of E. K. Ngala the Legal Services Manager of the respondents company herein signed on 4.10.2013.

The applicants contention is that the dispute in court does not relate to an employer/employee relationship as envisaged under Section 87(1) of Employment Act and Section 12 of the Labour Institutions Act 2007. They contend that the claimant is an employee of Ukwala super Market and not in any way Chemelil Sugar Company Limited and so the dispute is before a wrong court. The claimant alleges that the respondent created an advertisement for it's products using a photograph taken from the claimant without his consent and thereby acquiring economic gain. The respondents aver that this claim should therefore be before a Civil Court and other than the Industrial Court since claimant is not an employee of Chemelil Sugar Company.

The claimant respondents opposed this application and insist that as at paragraph 15 of their replying affidavit, the claimant was taken a photograph while offloading sugar at Ukwala super market by the

applicants herein. The respondent claimant have since enjoined Ukwala super market in this claim as second respondent and therefore given that the claimant's employer Ukwala super market is party to the case, the respondent claimant insist that this court has jurisdiction.

Having considered the averments of the parties, the issues for determination are as follows:-

1. **Whether the application is properly before court.**
2. **Whether this court has jurisdiction to determine this claim.**

On 1st issue, the applicants have brought this application under the right provisions of law. However, the respondent applicants are relying on Section 12 of the Labour Relations Act 2007 which was repealed in 2011. This in itself however does not make the application fatally defective considering the provision of Article 159 of the Constitution. I will therefore consider the substance of the application.

On the second issue, jurisdiction is everything and without jurisdiction, it would be a waste of court's precious time to go on with this case. The issues raised in this case by the claimant relate to the 1st respondents action of taking him a photograph offloading sugar while at the 2nd respondent's premises on duty. There is no information that the 1st respondent had any employment relationship with the 1st claimant and neither is there knowledge that the 2nd respondent as claimant's employee authorized the taking of the claimant's photograph.

Under Section 12 of the Industrial Court Act 2011, the jurisdiction of this court is well listed as it relates to disputes relating to or arising out of an employment between an employer and an employee and extends to Unions and Federations.

The matter before this court however relate to parties who are not in any way in an employment relationship. It is therefore the finding of this court that this court lacks jurisdiction to entertain this claim which should be filed before a Civil Court. I therefore strike out the claim and order claimants to pay costs to the respondents herein.

HELLEN WASILWA

JUDGE

14/3/2014

Appearances:-

Amondi for claimant

Oyuko for respondents

CC. Wamache