



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO 745 OF 2012

**KENYA BUILDING CONSTRUCTION TIMBER AND
FURNITURE INDUSTRIES EMPLOYEES UNION.....CLAIMANT**

VS

NAKALA BUILDING GENERAL CONTRACTORS.....RESPONDENT

RULING

1. On 3rd May 2012, the Claimant filed a Memorandum of Claim citing the issue in dispute as unlawful dismissal of Stephen Otieno, the Grievant herein. Alongside its Memorandum of Response dated 8th October 2013, the Respondent filed a Notice of Preliminary Objection on the following grounds:

- a. That the Claimant has no *locus standi* to bring this claim;
- b. That the Grievant has not executed an affidavit to verify the facts of the claim.

2. In reply, the Claimant filed submissions on 16th January 2014. On the issue of *locus standi* the Claimant submitted that it is entitled to represent its members irrespective of where the members may be working. In this regard, a prior relationship between the Claimant and the employer is not required.

3. With regard to the question whether the Grievant is a member of the Union, the Claimant submitted that the dispute herein which commenced in 2006 had gone through conciliation and various correspondence between the parties and the Conciliator had been exchanged.

4. According to the Claimant, the issue of the Grievant's membership with the Claimant was never raised at the conciliation stage and it was therefore hypocritical for the Respondent to raise it at this stage. The Claimant also submitted copies of receipts issued to the Grievant by the Claimant on account of monthly subscriptions for the months of March, April, May and August 2006.

5. With respect to execution of the verifying affidavit, the Claimant submitted that since it had the *locus standi* to represent the Grievant in this claim, its Secretary General had the authority to sign the verifying affidavit over the matters the Claimant had handled on behalf of the Grievant at the conciliation stage.

6. A preliminary objection is defined in the well known case of *Mukisa Biscuits Vs West End Distributors Limited (1969 EALR)* as that which:

“raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise

of judicial discretion.”

7. The gist of the Preliminary Objection taken by the Respondent is that the Claimant lacks the capacity to represent the Grievant in this case. The Respondent states that the Claimant has not established the existence of any relationship to warrant institution of this claim on behalf of the Grievant. In addition, no proof of the Grievant's membership with the Claimant has been produced.

8. In the case of ***Transport and Allied Workers Union Vs DHL Global Forwarding (K) Limited (Industrial Court Cause No 745 of 2010)*** this Court pronounced itself on the power of trade unions to sue on behalf of its members as follows:

“The Labour Relations Act and the Industrial Court (Procedure) Rules confer a special jurisdiction on Trade Unions in industrial litigation where a Trade Union may sue in its own name on behalf of its members who are aggrieved by the action of their employer.”

9. Towards this end, Rule 6 of the Industrial Court (Procedure) Rules, 2010 empowers representatives of trade unions to sign statements of claim and accompanying affidavits with regard to disputes emanating from conciliation proceedings.

10. From the documents on record, it is clear that this claim went through the conciliation process culminating with recommendations issued by the Conciliator which the Respondent failed to honour. I therefore find the pleadings which were signed by the Secretary General of the Claimant Union to be properly before this Court. The question of the Grievant's membership with the Claimant Union is one of fact which cannot be determined *in limine*.

11. For the foregoing reasons, the Court finds the Respondent's Preliminary Objection not well taken and hereby overrules it with costs to the Claimant.

Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 6TH DAY OF MARCH 2014

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JUDGE

In the Presence of:

.....*Claimant*

.....*Respondent*