



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT MOMBASA
(BIMA TOWERS)
CAUSE NO. 93 OF 2012
(Originally Nairobi Cause No. 1371 of 2012)

TAILORS & TEXTILE WORKERS UNION

CLAIMANT

v

KAPRIC APPARELS GARMENTS (EPZ) LTD

RESPONDENT

RULING

1. The Tailors & Textile Workers Union (Union) filed a Memorandum of Claim in Nairobi on 13 August 2012 against Kapric Apparels Garments (EPZ) Ltd and the issue in dispute was stated as *unlawful termination of Eunice Auma Ogweno-emp. No. 3363*.
2. The Cause was later transferred to Mombasa and on 8 February 2013 it was mentioned before me. Ms. Kanabar, for the Respondent informed the Court that they had information that the Grievant Eunice Auma Ogweno had died and the Court directed the Union to confirm the information and report back on 21 February 2013.
3. On 21 February 2013, Mr. Omondi, an official of the Union produced a copy of the Grievant's death certificate indicating that the Grievant had died on 29 March 2012. Mr. Omondi informed the Court that the cause of action survived the Grievant.
4. On 8 April 2013, the Respondent filed a Notice of Preliminary Objection seeking to have the claim struck out /dismissed on the grounds that the Grievant was deceased and no personal representative had been appointed in accordance with section 82(a) of the Law of Succession Act; that the Union had no locus standi and that the action was frivolous, vexatious and an abuse of the Court's process.
5. The preliminary objection was urged on 23 April 2013 after which the Court gave the Union time to get instructions on the question of locus and submit. The Union submitted on 24 May 2013.
6. For the Respondent, Mr. Khagram submitted that the Grievant died on 29 March 2012 while the Claim was filed on 13 August 2012 and that it is only a personal representative who could enforce the cause of action after the death of the Grievant. He further submitted that the Union had not been appointed as the personal representative of the Grievant. Mr. Khagram cited sections 2 and 82 of the Law of Succession Act and the Court of Appeal decision in Nairobi Civil Appeal No. 145 of 1990, *Trouistik Union International v Jane Mbeyu* to buttress his submissions.
7. Mr. Ogendi, Union official for the Union submitted that the preliminary objection was a delaying tactic and that in any case there was a letter from the Office of the President.
8. I have looked at sections 2 and 82 of the Law of Succession Act and the authority cited by Mr. Khagram. It is clear that it is a personal representative who has the power to enforce causes of action which survive a deceased for the benefit of his estate.
9. Further section 24 of the Employment Act is clear that any wages and other remuneration due to a

deceased employee shall be paid to a legal representative and if there is no legal representative such wages or property should be delivered to the local labour officer or District Commissioner to be held in trust.

10. The present cause was filed after the death of the Grievant. No personal representative had been appointed. I gave time to the Union to confirm whether any application had been made or was pending, but no information had been given by the time the matter was being mentioned on 21 March 2014 after the Deputy Registrar notified the parties through her letter of even date.
11. On the basis that no personal representative had been appointed at the time of filing the Claim and without making a determination on the locus of the Union, it is my view that the claim herein is incompetent and cannot survive and it is hereby struck out with no order as to costs.

Delivered, dated and signed in open Court in Mombasa on this 16th day of May 2014.

Radido Stephen

Judge

Appearances

Mr. Ogendi, Union official

for Union

Mr. Khagram instructed by

A.B. Patel Advocates

for Respondent