



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT KISUMU

CAUSE NO. 130 OF 2013

(Before Hon. Justice Hellen S. Wasilwa on 31st July, 2014)

JAMES JEFF JUMA }

LAWRENCE O. AYUKA }

JOSEPHAT I. ANAYA }

ELIUD N. OKERO } CLAIMANTS

-VERSUS-

MINI BAKERIES LTD RESPONDENTS

R U L I N G

The application before court is dated 28.11.2013 and a preliminary objection dated the same day. The application relates to the applicants contention that prior to the filing of Winam PMCC No. 106 of 2012, in respect of the same action, the cause was dismissed for want of jurisdiction against the claimants who were ordered to pay costs of Kshs 37,357/=.

The applicants now contend that since the claimant respondents have not paid the costs assessed, this suit should not proceed. They want this suit stayed until the said costs are paid.

The preliminary objection on the other hand is to the effect that the claimants were granted leave to file their case by Winam PM's Court within 14 days but they filed after the said 14 days and without seeking extension of time and therefore their suit should be struck out.

The claimant respondents opposed both the application and the preliminary objection. It is the claimant's position that the lower court having found it has no jurisdiction to entertain the matter could not proceed and make any other order and therefore it's orders are annulity. They submitted that the jurisdiction of this court is completely independent of the lower court and cannot be bound by orders of the lower court.

On the application, the claimant respondents submitted that it is misconceived and is brought under inapplicable order, as it relates to discontinued suit yet the lower court's case failed due to lack of jurisdiction.

Having considered submissions of the parties herein, the issues for determination are:-

- 1. Whether the orders of the lower court to the claimants to file suit before Industrial Court**

within 14 days affects this court's jurisdiction.

2. Whether non payment of costs in a lower court is a bar to the parties filing this suit.

On 1st issue, jurisdiction is everything. Once a court finds that it had no jurisdiction, it cannot proceed and make any other orders. The court can only strike out the suit and leave the parties to move the court that has jurisdiction.

The jurisdiction of the Industrial Court is not dependent on the lower court. It was therefore a misdirection for the lower court upon finding that it has no jurisdiction to entertain the suit to go ahead and purport to supervise the parties on how and when to file their case before the Industrial Court. It is therefore this court's findings that that direction was null and void and does not affect when the parties come to seek redress before this court.

The issue of costs is also independent of this court. The same should be adjudicated before the lower court which ordered costs to be paid. Non payment of costs in lower court cannot therefore be a bar to this court in proceeding with the claimant's case. I therefore find that both the application and preliminary objection have no merit and I dismiss them accordingly with costs to the claimant respondents.

HELLEN S. WASILWA

JUDGE

31/7/2014

Appearances:-

Rose for respondent applicants

Aboge for claimants respondents

CC. Wamache