



IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 340 OF 2014

KENYA CONCRETE, STRUCTURAL, CERAMIC TILES

WOOD PLY AND INTERIOR DESIGNS EMPLOYEES

UNION(K.C.S.C.W. & I) CLAIMANT

VERSUS

LAXMANBHAI CONSTRUCTION LTD RESPONDENT

AND

KENYA BUILDING, CONSTRUCTION,

TIMBER & FURNITURE INDUSTRIES

EMPLOYEES UNION

(K.B.C.T. & F.I.E.U.)..... INTERESTED PARTY

Mr. Agoya for Claimant

Mr. Moreje for the Respondent

M/S Chege for the Interested Party

RULING

1. The Interested Party has filed a notice of preliminary objection to this suit couched in the following terms;
 - i. That the cause as filed offends the provisions of **Part VIII** and **IX** of the **Labour Relations Act 2007**.
 - ii. That this Honourable court has no jurisdiction to hear the case in light of the above ground.
2. The nub of the objection is that the Claimant ought to have first reported the dispute to the Minister in terms of **Section 62** of the **Labour Relations Act** before approaching this Court for relief.
3. That it was only upon failure to resolve the dispute through conciliator, and obtaining a certificate

of unsolved dispute from the conciliator in terms of **Section 69(a)** that the Claimant would have filed this suit.

4. That the failure by the Claimant to follow this mandatory procedure denies this Court jurisdiction to hear and determine the dispute and the claim should be dismissed with costs to the Interested Party.

5. The Respondent has filed submissions in support of the preliminary objection, urging the Court to dismiss the claim for circumventing mandatory statutory procedure.

Undisputed facts

6. The issue in dispute is deduction of Trade Union dues from the unionsable employees of the Respondent company and remit the same to the Claimant union.

7. The Interested Party is a rival union in the Industry (Kenya Building, Construction, Timber and Furniture Industries Employees Union).

By fact of joinder of the Interested Party to the suit the matter has escalated from a mere union dues remission dispute to a demarcation dispute between two rival unions.

8. The statement of claim was filed on 7th March 2014, accompanied by a notice of motion under a certificate of urgency under **Section 12(1) and (2)** of the Industrial **Court Act, No. 20 of 2011** and **Section 48** of the **Labour Relations Act, No. 14 of 2007**.

9. The Applicant / Claimant sought *inter alia* an order compelling the Respondent to immediately effect deductions of trade union dues from the wages of its employees who have acknowledged the membership of the Claimant union at the end of the month following the date shown in the check-off forms and remit the monies so deducted to the specified account held by the Claimant.

10. The grounds set out in the notice of motion, the supporting Affidavit of the Secretary General of the Claimant union **Mr. Dishon Angoya Matanga** and in the statement of claim itself, do not allege that this matter was referred to conciliation under **Part VIII** of the **Labour Relations Act**, before approaching the Court.

11. When the matter came *ex parte* before **Rika J.** on 7th March 2014, he certified the matter urgent and made directives to the Respondent to file a Response within seven (7) days.

12. It is of note that no interim relief was sought in the notice of motion.

13. It would appear the only purpose of bringing this suit on a certificate of urgency was to get the same heard and determined on a priority basis which intention appear to have been achieved thus far by the Claimant union.

14. In terms of **Section 74** of the **Labour Relations Act**, certain matters may be brought to Court under a certificate of urgency and without the parties first having to follow the dispute resolution procedure under **Part VIII** of the **Act**.

15. These disputes include;

- a. the recognition of a trade union in accordance with **Section 62**; or
- b. a redundancy where:

- i. the trade union has already referred the dispute for conciliation under **Section 62(4)**; or
- ii. the employer has retrenched employees without giving notice; or
- iii. employer and employee engaged in an essential service.

16. All other disputes brought under **Labour Relations Act**, must first follow the dispute resolution mechanisms prior to being filed before Court.

This is for a good reason as discerned from the preamble of the **Labour Relations Act** which provides the purpose of the Act to include;

“..... encouragement of effective Collective Bargaining and promotion of order and expeditious dispute settlement”.

17. The purpose of the Act is defeated where parties run to Court without taking advantage of the elaborate dispute resolution mechanisms provided for in the Act.

Indeed **Rule 6(3)** of the **Industrial Court (Procedure) Rules 2010** provide for the filing of an affidavit by the Claimant or the representative of the Claimant attesting to the reasons why the dispute was not referred to conciliation. **Section 15(2)** of the **Industrial Court Act No. 20 of 2011**, provides;

*“The Court may refuse to determine any dispute, other than an appeal or review before the Court, if the Court is satisfied that there has been no attempt to effect a settlement pursuant to **subsection (1)**.”*

Subsection (1) allows the Court to adopt and implement on its own motion or at the request of the parties any other appropriate means of dispute resolution including internal methods, conciliation, mediation and traditional dispute resolution mechanisms in accordance with **Article 159 (2)(c)** of the Constitution.

18. This Court agrees with the decision of **Lady Justice Linnet Ndolo** in **Rift Valley Railways Workers Union (K) Limited and Another [2013] eKLR** where she stated;

*“In my view, **Section 74** of the **Labour Relations Act** provides an opportunity for trade unions to seek the urgent intervention of the Court to arrest a situation where there is imminent fundamental breach of the law. It cannot therefore be used to circumvent the conciliation process set out in the law.”*

19. This Court will also add that, only the specified category of cases, under **Section 74**, may be brought under a certificate of urgency in terms of **Section 74** of the **Labour Relations Act**.

The present suit is not one of the disputes specified under **Section 74** of the **Labour Relations Act**.

20. Accordingly, the Court invokes the provisions of **Section 15 (2)** of the **Industrial Court Act, No. 20 of 2011** to refer the dispute to the Minister for conciliation under the provisions of **Part VIII** of the **Labour Relations Act**. Only if the dispute is not resolved and a certificate of unresolved dispute is filed with the Court, may the matter be proceeded on in Court.

The preliminary objection is upheld.

Dated and Delivered at Nairobi this 31st day of October, 2014

MATHEWS N. NDUMA

PRINCIPAL JUDGE