



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 1299 OF 2011

BETWEEN

JOYCE WANJIKU MUCHIKO
CLAIMANT

VERSUS

TELKOM KENYA LIMITED
RESPONDENT

Rika J

CC. Mr. Kidemi

Mr. C. Onyony instructed by Onyony & Company Advocates for the Claimant

Mrs. Mbabu instructed by P.K. Mbabu & Company Advocates for the Respondent

RULING

1. The Claimant has applied for leave to amend her Statement of Claim dated 1st August 2011, to enable her enjoin the Communication Workers Union, so that she can adequately plead her case. The application is dated 3rd July 2013, and supported by the affidavit of the Claimant Joyce Wanjiku Muchiko, sworn 3rd July 2013.
2. The application is opposed. The Respondent filed its Grounds of Opposition on 16th July 2013, and the application was heard in the presence of both Advocates, on 29th July 2013.
3. The Claimant explained that the Trade Union is recognized by the Respondent, and holds a valid Collective Bargaining Agreement with the Respondent. The Claimant was at all material times a member of the Trade Union. The pre-Industrial Court Alternative Dispute Resolution Mechanisms involved the proposed Co-Claimant. The dispute concerns the termination of the Claimant's contract of employment which was subject to the CBA concluded between the Trade Union and Telkom Kenya Limited.
4. The Respondent argues that the Trade Union is not a necessary Party in the dispute and can always be called as a witness for the Claimant, if necessary. To join the Trade Union would impact on costs, and

scuttle the hearing of the main dispute, slated for 17th September, 2013. The Trade Union does not have a Claim against the Respondent, and there is no justification to be enjoined to the proceedings.

The Court Finds and Orders-:

5. This Court has in its past decisions concluded that a Trade Union may participate in trade disputes in which their Members are parties, in any one, or more of the following capacities:

- In their own interest;
- On behalf of their Members; and
- In the interest of their Members.

6. A Trade Union shares an identity of interests with its Members. It is not merely a body corporate, but is an association of employees or of employers. A question which touches on the termination of the contract of employment of a member of the Trade Union touches on the Trade Union's labour relations, and functions.

7. Trade Unions have thus enjoyed associational standing in disputes involving their Members. They may not have a claim to the outcome of the suit, but retain significant interest. They are the authors of the CBA upon which the dispute revolves. They cannot be denied the right to participate directly, not as witnesses, but as requisite parties to the dispute which frequently involves the interpretation and application of the CBA co-authored by the Trade Unions and the Employers.

8. In this dispute the Court is satisfied that the Communication Workers Union has associational interest in the outcome of the dispute, and must not be closed out of the proceedings. *It is hereby ordered-:*

[a] The application dated 3rd July 2013 is allowed.

[b] Amendment is allowed to the Statement of Claim in terms shown in the draft attached to the application.

[c] The Respondent is granted 21 days within which to file an Amended Statement of Reply.

[d] Parties to take a hearing date for the main Claim at the Registry after the closure of the pleadings.

[e] Costs in the cause.

Dated and delivered at Nairobi this 30th day of September 2013

James Rika

Judge

