



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**

**CAUSE NO. 308 (N) OF 2009**

**KENYA SHIPPING CLEARING**

**& WAREHOUSES WORKERS UNION**

**CLAIMANT**

**v**

**BOBMILL INDUSTRIES LTD**

**RESPONDENT**

**JUDGMENT**

1. The Kenya Shipping Clearing & Warehouses Workers Union (Union) filed a Memorandum of Claim against Bobmill Industries Ltd (Respondent) on 15 June 2009 and the issues in dispute were stated as retrenchment of Peter O. Nyabaga, Wycliffe Momanyi Onyiengo, Boniface Gachegu and Peter Morara Ondieki (Grievants).
2. The Respondent filed its Memorandum of Reply on 28 July 2009 and the Cause proceeded for hearing before Chemmutut J (as he then was) on 11 May 2010 and 22 June 2010 after which the Judge ordered that he would deliver an award on notice.
3. Around July 2012 Chemmutut J and other judges of the then Industrial Court left office under circumstances which are in the public domain. Regrettably Chemmutut J ceased holding office before he could pronounce award.
4. When new judges of the Industrial Court assumed office they were confronted by nearly 300 causes with pending awards and it was agreed that the files would be allocated to all the judges. This particular cause was allocated to me.
5. As a result, the Deputy Registrar of the Court notified the parties through her letter dated 10 September 2012 to appear before me for directions on 21 September 2012. Due to other official engagements I did not sit on that day and a notice to that effect was put up in the court notice board and in the cause list. All parties were directed to appear before me on 24 September 2012.
6. On 24 September 2012 none of the parties appeared. I was soon thereafter transferred to Mombasa and I requested Nzioki wa Makau J to mention the matter on my behalf. The Deputy Registrar wrote to the parties to this effect on 20 November 2012 to appear before the Judge on 29 November 2012. From the record it appears none of the parties appeared.
7. The file was thereafter transmitted to me in Mombasa and on 13 May 2013 the Deputy Registrar Mombasa notified the parties through EMS courier recorded delivery to appear for directions on 4 June 2013. On this day, only the Union was represented. Makau J before whom the file was placed set a further mention for 15 July 2013 with an order that a notice to appear issue to the Respondent.
8. On 15 July 2013 none of the parties appeared and I ordered that I would give my judgment on 13 September 2013.

**Union's case**

9. In its pleadings, the Union stated that it has no recognition agreement or Collective Bargaining Agreement with the Respondent. It further pleaded that the 4 Grievants were turn boys who were paid after every 3 days and were terminated on 4 May 2009 verbally after which they reported to the Union.
10. The Union submitted that the Grievants were retrenched and therefore were entitled to disturbance allowance, full compensation for job loss, trip allowance, safari allowance, final dues and severance pay.

### **Respondent's Case**

11. For the Respondent, it was pleaded that it had a valid recognition agreement with Kenya Chemical & Allied Workers Union and had dealt with this union for over 25 years and thus it was bound by the recognition agreement and Collective Bargaining Agreements signed with the Kenya Chemical & Allied Workers Union.
12. Further it was pleaded that the Union and Grievants had not provided evidence that the Grievants were members of the Union.
13. In the alternative it was pleaded the Grievants were casual employees and were reassigned from loading to products finishing section but refused to take up the new duties and thereafter stopped reporting to work. Retrenchment of the Grievants was denied.
14. The Respondent also called its Human Resources Officer, Tecla Adeka who testified on its behalf. The witness mainly testified on what had been pleaded.

### **Issues for determination**

15. From the foregoing the issues arising for determination are the locus of the Union to institute the proceedings and whether the Grievants were retrenched and unlawfully and appropriate relief.

### **Evaluation**

16. It is not disputed that the Union and the Respondent did not have a recognition agreement at the material time. Instead the Respondent had a valid recognition agreement with Kenya Chemical & Allied Workers Union. The Respondent had also concluded several Collective Bargaining Agreements with Kenya Chemical & Allied Workers Union.
17. Consequently, the question of locus standi arises. The initial contract was between the Respondent and the Grievants. Herein the doctrine of privity of contract becomes implicated. When the Respondent entered into a recognition agreement with Kenya Chemical & Allied Workers Union and subsequently concluded with it Collective Bargaining Agreements, the terms and conditions embodied in the Collective Bargaining Agreement became incorporated in the individual Grievants contracts through operation of section 59(1) and (3) of the Labour Relations Act.
18. In my view, the proper and authorized party which could report a trade dispute and commence proceedings on the basis of the Collective Bargaining Agreement was the Kenya Chemical & Allied Workers Union pursuant to the Labour Relations Act, or the Grievants individually or through an Advocate on the basis of the Employment Act, 2007.
19. In any case, the Union did not allege or present any evidence or proof that the Grievants were its members. The Union was not only a stranger to the employment relationship between the Grievants and the Respondent but it was not privy to any contractual relationship between the parties either in contract or through operation of law. It lacked the locus standi to commence the proceedings.
20. Because of the conclusion I have reached, it is not necessary to consider any of the other issues raised in the Cause and I hereby dismiss it with no order as to costs.
21. The Deputy Registrar to transmit this file back to Nairobi registry after delivery of this judgment.

**Delivered, dated and signed in open Court in Mombasa on this 27<sup>th</sup> day of September 2013.**

**Justice Radido Stephen**

**Judge**

**Appearances**

For Grievants

Kenya Shipping Clearing & Warehouses Workers Union

For Respondent

Mugambi Mungania & Co. Advocates