



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 641 of 2010

KENYA UNION OF EMPLOYEES OF VOLUNTARY

AND CHARITABLE ORGANIZATIONS (KUEVACO)CLAIMANT

VERSUS

DE LA RUE CURRENCY & SECURITY PRINT LIMITED.....RESPONDENT

RULING

This is a trade dispute reported by the **KENYA UNION OF EMPLOYEES OF VOLUNTARY AND CHARITABLE ORGANISATIONS** (herein after referred to as Claimant) against **DE LA RUE**. The issue in dispute is redundancy/breach of contract of the referee and prayers (as named in the claim) of De La Rue football Club. The Respondent filed their Memorandum of Defense on 9th August 2010. They applied to amend the defense and filed the amended Memorandum of Defense on 29th September 2010. In the Amended Memorandum of Defense the Respondent raised several defenses among them that the Memorandum of Claim discloses no cause of action against the Respondent, is frivolous, vexatious, an abuse of Court process and a fraud, that this court has no jurisdiction, that the relationship between the Claimant and the Grievants was gratuitous, that there is no recognition agreement between the Claimant and the Respondent, that there was no relationship of employer and employee between the grievants and the Respondent and that the claim is statute barred. The case was mentioned for directions on 5th July 2010 and fixed for hearing on 22nd September 2010. On the 22nd September 2010 the Respondent applied to amend their defense which was allowed. The case was then fixed for hearing on 25th October 2010. The case was further mentioned on 25th October 2010 and 19th November 2010. The case came up for hearing on 4th May 2011 before Hon. Justice Charles P. Chemmutut, the Principal Judge as he then was (now retired). The Claimant was represented by Mr. **Odin Boaz Otieno**, the Secretary General of the Claimant union while the respondent was represented by **Shean Omondi** of Daly & Figgis Advocates.

During the hearing the Respondents counsel raised the following objections:-

- 1) That this court lacks jurisdiction to hear the case.
- 2) That there is no employment relationship between the Claimant and the Respondent.
- 3) That the case is time barred.

The ruling was to be on notice. The file was handed over to me to prepare and deliver the ruling following the retirement of the Hon. Justice Chemmutut.

I will start with the 2nd issue of employment relationship. This is a matter that is factual and will be determined after hearing the parties.

On the issue of jurisdiction, the Claimants were employed by the De La Rue football Club through the Coach whom the respondents admits was their employee. As rightfully pointed out by the Respondent, the Club is not a legal entity as it is not registered. The respondent has also admitted paying the allowances of the players.

Since the Coach who was an employee of the Claimant is the one who recruited them, it must be presumed that he did so on behalf of the Respondent as the Respondent could not have employed a coach if there were no players for the coach to manage. I therefore hold that the coach through the football club were agents of the Respondent who was a disclosed principal.

On the issue of limitation, the claim herein arose in 2005. At that time the Employment Act 2007 had not been enacted. It is the Employment Act 2007 which reduced the limitation period for employment contracts from 6 years to 3 years. The claim was filed 5 years from the date on which the cause of action arose and therefore the limitation period of 6 years had not lapsed. Under the law that was applicable at the time the course of action arose.

For these reasons the objections raised by the Respondent are dismissed and parties are directed to fix a date for hearing of the main claim.

Orders accordingly.

DATED AND DELIVERED THIS 15TH DAY OF NOVEMBER 2012

HON. LADY JUSTICE MAUREEN ONYANGO

JUDGE.

_____ for Claimant

_____ for Respondent