



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT AT MOMBASA

CAUSE NUMBER 608 OF 2016

BETWEEN

BAKERY, CONFECTIONERY, FOOD

MANUFACTURING & ALLIED WORKERS UNION (KENYA).....CLAIMANT

VERSUS

MEDINA BAKERY LIMITED.....RESPONDENT

RULING

1. This Claim is about Recognition Agreement. The Claimant prays the Court, in its Statement of Claim filed on 17th August 2016, to order the Respondent to execute Recognition Agreement, in the form and model presented to the Respondent by the Claimant. Other prayers are peripheral.

2. The Respondent filed a Notice of Preliminary Objection on 6th October 2016. Mainly, Objection is on the procedure adopted by the Respondent in coming to Court. The Respondent submits the Claimant flouted section 62 of the Labour Relations Act No. 14 of 2007, and Rule 6 of the Industrial Court (Procedure) rules 2010.

3. The Respondent argues the Claim is properly before the Court, having been filed under Section 74 of the Labour Relations Act, under Certificate of Urgency.

4. Submissions made by the respective Parties' Advocates, were recorded by the Court on 16th November 2016.

Upon careful consideration of the Submissions, the **Court Finds:-**

5. Section 74 of the Labour Relations Act allows a Trade Union to refer a dispute to the Employment and Labour Relations Court as a matter of urgency, if among other things, the dispute concerns the Recognition of a Trade Union, in accordance with Section 62.

6. Section 62 involves report to the Cabinet Secretary who appoints a Conciliator. If the dispute is resolved on conciliation, agreement is recorded under Section 68. If disagreement persists, the Conciliator issues Certificate of Disagreement, under Section 69.

7. Section 54(6) of the Act similarly requires recognition disputes are resolved under Section 62. Section 54(7) states if there is no settlement at conciliation, the Trade Union may refer the dispute to the Employment and Labour Relations Court.

8. Section 74 does not therefore stand alone, and allow for filing of Claims in disregard of Section 62. In the view of the Court, Section 74 only allows Trade Unions to file Claims under Certificate of Urgency, and perhaps pursue interim measures, while the full procedural requirements under Section 54 and 62 unfold. It is not a substitute for the procedure prescribed in these other two provisions of the Law.

9. There is evidence the Claimant made a report to the relevant Cabinet Secretary in its letter dated 2nd August 2016.

10. Having done so, the Claimant did not pursue the procedural requirements under Section 62 of the Labour Relations Act, but abandoned all other processes, and filed the Claim in Court on 17th August 2016.

11. The Conciliator has not been appointed and conciliation has not taken place. There is no Certificate of Disagreement issued under Section 69. There is no evidence that the Respondent was made aware of or involved in, the process under Section 62.

12. The Industrial Court (Procedure) Rules 2010, are framed in such a way that underscores the mandatory nature of Section 62 of the Labour Relations Act, notwithstanding the urgency provisions contained in Section 74.

13. Rule 6 regulates all trade disputes referred to this Court under the provisions of the Labour Relations Act. These include disputes coming under Section 74. It is mandatory the Claim filed under the Labour Relations Act is accompanied by a report from the Conciliator on the conciliation process, supported by minutes of the conciliation meetings. A Certificate issued by the Conciliator under Section 69(a) must be exhibited. If no such Certificate is available, Claimant must swear and file an affidavit, explaining why there is no Certificate.

14. The Claimant has not complied with these requirements of the Law. The Claim was not filed in accordance with the Rules. The procedure under Section 54 and 62 of the Labour Relations Act, was not observed.

15. The effect of non-observance does not have to be striking out and dismissal of the Claim. Section 15 of the Employment and Labour Relations Court Act, allows the Court to stay proceedings and refer Parties to conciliation. The default is not incurable.

IT IS ORDERED:-

a. The Court agrees with the Respondent that the Claim is improperly before the Court.

c. Proceedings shall be stayed indefinitely.

c. Parties are referred back to the Mombasa County Labour Office for conciliation.

d. The Claimant is at liberty to revert to Court once the procedure under Section 62 of the Act is exhausted, and requirements of Rule 6 met.

Dated and delivered at Mombasa this 13th day of December, 2016.

James Rika

Judge



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