



REPUBLIC OF KENYA



KENYA LAW
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End to End Limited v Kwale Teachers Training College & another (Civil Case E031 of 2022) [2024] KEHC 16961 (KLR) (1 March 2024) (Ruling)

Neutral citation: [2024] KEHC 16961 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL CASE E031 OF 2022
F WANGARI, J
MARCH 1, 2024**

BETWEEN

END TO END LIMITED PLAINTIFF

AND

KWALE TEACHERS TRAINING COLLEGE 1ST DEFENDANT

**THE REGIONAL WORKS OFFICER, MINISTRY OF TRANSPORT,
INFRASTRUCTURE PUBLIC WORKS, HOUSING & URBAN DEVELOPMENT
STATE DEPARTMENT OF PUBLIC WORKS 2ND DEFENDANT**

RULING

1. The Plaintiff filed this suit via Plaintiff dated 11/5/2022 over a contractual dispute between the two parties. The Plaintiff prayed for the following orders;
 - i. A permanent injunction do issue against the Defendants jointly and severally, to bar them from terminating the performance of the tender reference number KWL/TTC/T/01/2021 for the proposed erection and completion of a hostel block.
 - ii. A permanent order of injunction do issue restraining the Defendants from re-advertising, re-issuing, contracting or otherwise interfering with the tender reference number KWL/TTC/T/01/2021.
 - iii. An order of specific performance do issue for the completion of the contract herein.
 - iv. In the alternative and without prejudice to the foregoing prayers, the court do make an order and find that the Defendants are in breach of the tender contract number KWL/TTC/T/01/2021 and/ or have frustrated the said contract.
 - v. An order do issue compelling the dependence to make measurements of the works already done and proceed to make payment for the same.



- vi. That the court assesses damages for breach of contract and order compensation to the plaintiff.
 - vii. That the cost of this suit be provided for.
2. After the parties complied with Order 11 of the *Civil Procedure Rules*, the matter was fixed for hearing. It is important to note that Case Management Conference and fixing of hearing date was done in the absence of the Defendants.
 3. When the matter came up for hearing on 19/2/2024, the counsel for the Defendants M/S Waswa, informed the court that they did not understand why the matter was still in court yet the parties had settled. She further stated that Prayers 1,2,3 and 5 had been settled. Prayer 4 was an alternative to prayer 3.
 4. M/S Mukoya for the Plaintiff admitted that indeed the parties had settled as per the said prayers. However, prayer no. 4 was subject to hearing. She submitted that it was ‘not by mistake’ that the words ‘without prejudice’ were put in the prayer no. 4. The prayed that the matter do proceed for hearing.
 5. Having considered the submissions by both counsels, the only issue for determination is whether the matter was fully settled, or prayer no. 4 was independent from the other prayers.
 6. The counsel for the Defendants submitted that prayer no. 4 was an alternative to prayer no. 3, which was settled. On the other hand, the counsel for the Plaintiff submitted that the prayer in issue was independent from prayer no. 3 thus the insertion of the words ‘without prejudice’
 7. I have perused though the said prayer. It reads as follows;

“In the alternative and without prejudice to the foregoing prayers, (emphasis mine), the court do make an order and find that the Defendants are in breach of the tender contract number KWL/TTC/T/01/2021 and/ or have frustrated the said contract.”
 8. In *Black’s Law Dictionary*, 2nd Edition, the word ‘alternative’ means;

“One or the other of two things; giving an option or choice; allowing a choice between two or more things or acts to be done”
 9. Further, in *Merriam-Webster's Dictionary of Law* ©1996, the word ‘alternative’ means;

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 - “1 : a proposition or situation offering a choice between two or more things only one of which may be chosen
 - 2 one of two or more things, courses, or propositions to be chosen b : something a : which can be chosen instead”
 - “in the alternative”
 - 1 : for or as an alternative [asked for specific performance, or in the alternative, damages of \$20,000] [a new trial may be asked for in the alternative]
 - 2 : in such a way that offers a choice [relief in the alternative...may be demanded "Federal Rules of Civil Procedure Rule 8(a)"] [plead in the alternative]
 10. In addition to the above, the word ‘without prejudice’ simply means that where a right or claim exists, whatever is granted is being done so without affecting that existing right or claim. In the present case,



the Plaintiff chose to frame its prayers in the alternative. Having being granted the alternative, it simply meant that the said grant was not a bar from them seeking any other further orders or reliefs. However, it would be onerous to allow the Plaintiff have a second bite of the cherry. It has already had its share of the cake and I thus find that the claim is fully settled.

11. In *Jasbir Singh Rai and 2 Others v Tarlochan Singh Rai and 4 Others* [2007] eKLR, it was held that;

“litigation must end at a certain point regardless of what the parties think of the decision which has been handed down. It is a doctrine or principle based on public interest.”

12. Further, under Article 159 (2) of the *Constitution* provides as follows;

“(1) Judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under this Constitution.

(2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles—

(a) justice shall be done to all, irrespective of status;

(b) justice shall not be delayed;

(c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3);

(d) justice shall be administered without undue regard to procedural technicalities; and

(e) the purpose and principles of this Constitution shall be protected and promoted.”

14. The judiciary is under the constitutional command to promote alternative forms of dispute resolutions. In this case, the parties settled. By allowing the Plaintiff’s prayer to prosecute prayer no. 4, would be frustrating the settlement. I therefore decline to rule in favour of the Plaintiff.

15. Following the foregone discourse, the upshot is that the following orders do hereby issue: -

a. The suit is hereby deemed as settled.

b. File closed

Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 1ST DAY OF MARCH, 2024.

F. WANGARI

JUDGE

In the presence of;

Miss Mukoya Advocate for the Plaintiff

N/A by the Defendant

Barile, Court Assistant

