



Oyieke v Kenya National Trading Corporation Ltd (Cause E021 of 2024) [2024] KEELRC 1245 (KLR) (15 May 2024) (Ruling)

Neutral citation: [2024] KEELRC 1245 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E021 OF 2024**

**S RADIDO, J
MAY 15, 2024**

BETWEEN

JACK OMONDI OYIEKE CLAIMANT

AND

KENYA NATIONAL TRADING CORPORATION LTD RESPONDENT

RULING

1. Jack Omondi Oyieke (the Claimant) sued Kenya National Trading Corporation Ltd (the Respondent) on 28 March 2024, alleging unfair termination of employment and breach of contract.
2. On 15 April 2024, the Respondent filed a Notice of Preliminary Objection contending:
 - i. That this Honourable Court lacks jurisdiction to hear and determine this matter in view of the doctrine of exhaustion of internal dispute resolution mechanisms.
 - ii. That the Claimant has not exhausted alternative dispute resolution mechanisms pursuant to Article 159 (2)(c) of the *Constitution* of Kenya, 2010.
 - iii. That the Claimant has not exhausted internal dispute resolution mechanisms pursuant to Provision 11.23 of the Kenya National Trading Corporation Ltd Human Resource Policy and Procedures Manual, 2018.
 - iv. That this Honourable Court lacks jurisdiction to hear and determine this matter pursuant to Section 74 of the *Public Service Commission Act* Cap.185 and Regulation 68(1) of the *Public Service Commission Regulations, 2020*.
 - v. That both Supporting Affidavit and verifying affidavit are defective pursuant to Section 5 of the *Oaths and Statutory Declarations Act* Cap.15.



- vi. That the Claimant failed to disclose material and crucial facts regarding this case therefore this suit is frivolous, vexatious and an abuse of the court process.
 - vii. That in the circumstance, the Claimant's suit and the prayers sought therein are monumental procedural and substantive legal nullity, bad in law, misconceived and discloses no reasonable cause of action as against the Respondent thus rendering it fatally and incurably defective.
 - viii. That this suit is fatally defective and grounded on quicksand that even the provisions of Article 159(2)(d) of the Constitution of Kenya cannot salvage it.
 - ix. That the entire suit is an abuse of the process of this Honourable Court and a waste of judicial time, therefore ought to be dismissed with costs to the Respondent.
3. The Court gave directions on the Preliminary Objection on 16 April 2024. The Respondent was directed to file and serve its submissions on or before 26 April 2024, while the Claimant was to file and serve its submissions on or before 10 May 2024.
 4. The Respondent filed its submissions on 9 May 2024, while the Claimant filed his submissions on 26 April 2024 (the Respondent did not offer any explanation for the late filing of the submissions).
 5. By failing to comply with the timelines for the filing and service of submissions, the Respondent has frustrated the Court's attempt to deal with the Cause herein expeditiously and proportionately as contemplated by this Court's constitutive statute, the Employment and Labour Relations Court Act.
 6. Further, by failing to file and serve the submissions within the set timelines, the Respondent has failed to prosecute the Preliminary Objection.
 7. The submissions are expunged from the record.
 8. Nevertheless, the Court has looked at the legal framework relied on by the Respondent and noted that the Respondent has not placed any material before the Court to demonstrate a nexus between its disciplinary processes and the Public Service Commission of Kenya or the Public Service Commission Act.
 9. Under the Act, there is a supposition that the Public Service Commission appointed one of its staff as an authorized officer for the purposes of section 74 of the Public Service Commission Act.

Orders

10. In light of the above, the Court strikes out the Notice of Preliminary Objection.
11. The Court further orders that any preliminary legal points on jurisdiction will be taken as part of the hearing on the merits and should be included if at all in the Response.
12. The Claimant to have costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 15TH DAY OF MAY 2024.

RADIDO STEPHEN, MCIArb

JUDGE

Appearances

For Claimant Kisaka & Associates



For Respondent Pancras Kariuki Muriuki Advocate
Court Assistant Chemwolo

