



**Union of National Research & Allied Institute Staff of Kenya v National Museums of Kenya; Kenya Union of Commercial, Food and Allied Workers (Interested Party) (Cause E641 of 2022) [2024] KEELRC 1311 (KLR) (27 May 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1311 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE E641 OF 2022**  
**NJ ABUODHA, J**  
**MAY 27, 2024**

**BETWEEN**

**UNION OF NATIONAL RESEARCH & ALLIED INSTITUTE STAFF OF KENYA ..... APPELLANT**

**AND**

**NATIONAL MUSEUMS OF KENYA ..... RESPONDENT**

**AND**

**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED WORKERS ..... INTERESTED PARTY**

**RULING**

1. By a preliminary objection dated 21<sup>st</sup> December, 2022 the Interested Party herein raised a preliminary objection to the effect that:
  - i. Trade dispute ML/LD/54/9/2021 is prematurely lodged in Court in violation of section 69(a) of the [Labour Relations Act](#) and rule 5(1) (b) of the rules of the Court
  - ii. The issues raised in this suit are already decided in this Court whose fresh filing offends the settled principles of *res judicata*
  - iii. There exists a valid Recognition and Collective Bargain Agreement between the respondent and the Interested Party and where there's a dispute as to continued relationship between the parties, the claimant must institute a demarcation dispute under section 54(6) & 7 of the [Labour Relations Act](#), 2007.



- iv. The respondent cannot purport to engage with the claimant without first approaching the National Labour Board under section 54(5) of the [Labour Relations Act](#), 2007 to terminate her recognition agreement with the Interested Party.
2. In the submissions in support of the application, the Interested Party submitted that the claimant filed the conciliator's findings and recommendations however there was no evidence that the conciliator issued a certificate of unresolved dispute or a certificate of conciliation as required under section 69(a) of the [Labour Relations Act](#), 2007 which is couched in mandatory terms.
3. The Interested Party further submitted that the issues raised in the suit being deduction of union dues and recognition agreement, were already decided by the Court hence *res judicata*. According to the Interested Party, these issues were decided in Cause 1366 of 2011, 1126 of 2012 and Cause 30(N) of 2019 all between the same parties.
4. The claimant on the other hand submitted that even though the Interested Party was making allegations of existence of a Recognition Agreement between itself and the respondent, the same had neither been produced before the Conciliator nor filed in Court. The question whether there is a Recognition Agreement or not is one of fact and not law. The Court would have to call and assess evidence availed before it. In this regard since preliminary objection is restricted to legal questions, the court could not determine the Interested Party's assertion on the face value without delving deeper into and ascertaining the factual and evidentiary issues arising from the assertions.
5. This Court has considered and reviewed the preliminary objection by the Interested Party and submissions in support. The Court has further considered response by the Claimant and is persuaded that the respondent already has a recognition agreement with the respondent and a CBA. Further that this issue has been litigated severally as evidenced by the causes referred to by the Interested Party hence *res judicata*. As was held by Radido J in the case of [Kenya Union of Commercial Food & Allied Workers Union v Attorney General & another; Central Organization of Trade Unions \(Interested Party\)](#) [2020] eKLR.

“One of the principal objectives for the establishment of this Court was to further secure and maintain good employment and labour relations in the country...The question, therefore, begs whether lowering the simple majority threshold and allowing multiple unions in the workplace would serve the need for industrial harmony in the workplace...The statutory principle of simple majority is not without purpose. It facilitates the orderly conduct of collective bargaining within the industry. It reduces the risk of the proliferation of trade unions in the workplace. It enhances industrial peace...Allowing multiple Unions to be recognised by an employer would be a recipe for chaos.” (emphasis mine)

6. I cannot agree more and to that extent the Court upholds the preliminary objection and hereby dismisses this suit with costs.
7. It is so ordered

**DATED THIS 27<sup>TH</sup> DAY OF MAY, 2024.**

**DELIVERED THIS 27<sup>TH</sup> DAY OF MAY, 2024.**

**ABUODHA NELSON JORUM**

**JUDGE**

