



REPUBLIC OF KENYA



**KENYA LAW**  
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**Atik t/a National Union of Water and Sewerage v Jeruto & 11 others (Employment and Labour Relations Cause E923 of 2023) [2024] KEELRC 1841 (KLR) (12 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1841 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**EMPLOYMENT AND LABOUR RELATIONS CAUSE E923 OF 2023**

**SC RUTTO, J**

**JULY 12, 2024**

**BETWEEN**

**PHILEMON OTIENO ATIK T/A NATIONAL UNION OF WATER AND SEWERAGE ..... CLAIMANT**

**AND**

**RAEL JERUTO ..... 1<sup>ST</sup> RESPONDENT**  
**KENNEDY KIPKEMBOI CHONGWO ..... 2<sup>ND</sup> RESPONDENT**  
**EVERLYNE AHOLI ..... 3<sup>RD</sup> RESPONDENT**  
**HESBON GILLPYNE NYAMAGWA ..... 4<sup>TH</sup> RESPONDENT**  
**KENYA UNION OF WATER AND SEWERAGE EMPLOYEES (KUWASE) ..... 5<sup>TH</sup> RESPONDENT**  
**CABINET SECRETARY MINISTRY OF LABOUR & SOCIAL PROTECTION ..... 6<sup>TH</sup> RESPONDENT**  
**NAIROBI CITY WATER AND SEWERAGE COMPANY ..... 7<sup>TH</sup> RESPONDENT**  
**REGISTRAR OF TRADE UNIONS ..... 8<sup>TH</sup> RESPONDENT**  
**SALOME WAIRIMIU THUMI ..... 9<sup>TH</sup> RESPONDENT**  
**WYCLIFFE WAKI ONDIT ..... 10<sup>TH</sup> RESPONDENT**  
**MUGITA COLLINS OMONDIT ..... 11<sup>TH</sup> RESPONDENT**  
**ELIJAH OTIENO WAWACH ..... 12<sup>TH</sup> RESPONDENT**



## RULING

1. What comes up for determination is the 10<sup>th</sup> Respondent's Preliminary Objection dated 24<sup>th</sup> February 2024, which is premised on the following grounds: -
  - a. The Claimant lacks the requisite locus standi to institute this suit being a natural person and at the same time purporting to trade as a trade union as such this Court lacks the requisite jurisdiction to entertain this matter as there is no known Claimant in law before it.
  - b. This Honourable Court lacks requisite jurisdiction to hear and determine this matter as it offends mandatory provisos of Section 12 (1) and (2) of the Employment and *Labour Relations Act* and is not only a nonstarter but bad in law and for striking out as it has no basis at all.
  - c. The purported Claimant Union; NUWASE is not registered as a trade union as required by Section 19(1) of the *Labour Relations Act* and therefore the same is not a corporate entity as contemplated by Section 21 of the *Labour Relations Act* as such cannot institute this suit in the impugned manner.
  - d. This Claim offends the mandatory provisions of Section 2 of the *Labour Relations Act* Cap 233 Laws of Kenya in that the Claimant (Philemon Otieno Atik) is not an authorized representative of the impugned trade Union (NUWASE).
  - e. This Claim offends the mandatory provisions of section 41(1) of the *Labour Relations Act* to the extent that it has not been filed by five or more persons having sufficient interest in the reliefs sought.
  - f. The Claimant (Philemon Otieno Atik) has no requisite authority to plead, sign affidavits and/ or file a suit on behalf of the impugned trade union.
  - g. That the Claim herein is misconceived, scandalous, frivolous, vexatious and a blatant abuse of the due process of the Court.
  - h. That the sum total of this claim is that it is incompetent, incurably fatally defective and the same should be struck out with costs to the 10<sup>th</sup> Respondent.

### Submissions

2. The Preliminary Objection was canvassed by way of written submissions. Save for the Claimant, the 7<sup>th</sup> and the 10<sup>th</sup> Respondent, the other parties did not file written submissions. I have considered the written submissions on record.

### Analysis and Determination

3. It is discernible that the 10<sup>th</sup> Respondent has raised eight grounds in support of the Preliminary Objection. The first ground of objection is that the Claimant lacks the requisite locus standi to institute the suit being a natural person and at the same time purporting to be a trade union.
4. As per the Black's Law Dictionary, 10<sup>th</sup> Edition (page 1084) locus standi is the right to bring an action or to be heard in a given forum. It literally means 'a place of standing'.



5. Therefore, where an objection is raised with respect to a party's locus standi and the Court finds in the affirmative, it means that such a party has no right to be heard and that point alone may dispose of the suit without having to resort to ascertaining the facts.
6. To this end, the Court finds that the first ground of objection as raised by the 10<sup>th</sup> Respondent, fits the description of Preliminary Objection as was held in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd. (1969) EA 696*.
7. Having found as such, I now move to determine whether the Claimant herein has locus standi to institute and prosecute the suit herein.
8. In the Memorandum of Claim, the Claimant herein, Mr. Philemon Atik, has described himself as a duly registered trade union.
9. Pursuant to Section 21 of the *Labour Relations Act*, once a trade union is duly registered it acquires among other capacities, the capacity to sue and be sued in its own name. Therefore, it attains the status of a quasi-corporation, capable of suing for and being sued. Fundamentally, it becomes a juristic person.
10. In this case, it is evident from the title of the suit that Mr. Atik has brought the suit in his own capacity as a natural person whereas the trade union has the capacity to sue in its own name.
11. Applying the provisions of Section 21 of the *Labour Relations Act* to the instant case, it becomes apparent that Mr. Atik does not have the capacity to bring the suit in his own name. More importantly, he cannot trade in the name of a trade union.
12. The bottom line is that the only entity that has the capacity to sue is the trade union in its registered name and not any individual purporting to act in his or her own capacity or for that fact, trading in the name of the trade union.
13. To this end, I find and hold that the Claimant herein being a natural person, does not have locus standi to institute and prosecute the suit herein.
14. The total sum of my consideration is that the Preliminary Objection is merited hence it is upheld with the consequence that the instant suit is struck out.
15. There will be no orders as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12<sup>TH</sup> DAY OF JULY 2024.**

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**STELLA RUTTO**

**JUDGE**

In the presence of:

For the Claimant In person

For the 7<sup>th</sup> Respondent Ms. Akelo instructed by Mr. Otieno

For the 10<sup>th</sup> Respondent Mr. Omenta instructed by Mr. Busiega

For the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> Respondents No Appearance

Court assistant Millicent Kibet

Order



In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**STELLA RUTTO**

**JUDGE**

