



**Maregwa v Unaitas Sacco Society Limited (Cause E767 of 2024)
[2026] KEELRC 1145 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEELRC 1145 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E767 OF 2024
BOM MANANI, J
APRIL 30, 2026**

BETWEEN

GORDON CHARLES MAREGWA CLAIMANT

AND

UNAITAS SACCO SOCIETY LIMITED RESPONDENT

RULING

Background

1. The Claimant filed the instant suit to claim for alleged terminal benefits from the Respondent following his resignation from employment. He contends that the Respondent did not pay him all the benefits that were due to him.
2. Upon being served with the Memorandum of Claim, the Respondent filed the application dated 18th December 2024 seeking the following orders:-
 - a. That the court be pleased to strike out the suit.
 - b. That in the alternative, the court be pleased to stay proceedings in the matter and refer it to internal dispute resolution mechanism provided for in its (the Respondent's) Human Resource Policy.
 - c. That the Claimant be ordered to shoulder costs of the application.
3. The application is premised on the grounds which are set out on the face thereof and the affidavit of one Harriet Nyamboki. The affiant contends that the Respondent's Human Resource Policy provides for internal dispute resolution procedures between it (the Respondent) and its employees. She contends that the Claimant was obligated to subject this claim to the aforesaid dispute resolution process but did not do so. As such, she asserts that this suit is premature and bad in law.



4. The Claimant has opposed the application. He contends that prior to filing this action, he tried to engage the Respondent in order to amicably resolve the matter but to no avail. He contends that the Respondent had the opportunity to resolve the dispute out of court but did not do so.
5. The Claimant alleges that mediation is in any event voluntary. As such, he contends that the court should not penalize him for approaching it with the dispute.
6. The Claimant avers that after he filed suit, the court referred the parties to court annexed mediation. However, he contends that the process failed. As such, it is his case that the parties have already attempted mediation to no avail and that the matter can only be resolved by this court.
7. The Claimant further contends that after the Respondent was served with summons to enter appearance in the cause, it filed a defense thus submitting to the court's jurisdiction. As such, he contends that the application to strike out the suit for failure to go for alternative dispute resolution is misguided.

Analysis

8. The court has perused the Respondent's Human Resource Policy and confirms that indeed the instrument requires any dispute between the Respondent and its employees to be subjected to internal dispute resolution mechanisms before the matter can find its way to court. Therefore, the Respondent's contention that the Claimant ought to have tried to have the matter resolved internally before he could approach the court is in line with the aforesaid policy instrument.
9. The Claimant does not dispute this reality. However, it is his case that he in fact tried to have the matter resolved outside court before he approached the court but did not make any meaningful progress. He contends that his lawyers wrote to the Respondent over the dispute but did not get any response. Hence the decision to approach the court.
10. It is noteworthy that although the Respondent alleges that the Claimant did not seek to have the dispute resolved outside court before he filed this suit, it did not controvert his contention that it did not respond to his lawyer's demand which would have triggered the alternative dispute resolution process. Absent this, the court is inclined to believe the Claimant's assertion that his attempts to have the matter resolved outside court failed owing to the Respondent's non-responsiveness.
11. The court further notes that even after suit was filed, the Claimant's lawyer sought referral of the cause to alternative dispute resolution (ADR). Evidence of this can be seen from the proceedings of 4th February 2025 when the lawyer asked for the matter to be referred to ADR.
12. On that date, the Respondent's lawyer undertook to liaise with the Claimant's lawyer over the matter and report back to court. However, it appears that the proposed mediation was not pursued.
13. On 30th April 2025, this court referred the parties to mediation. However, they were not able to resolve the dispute amicably and the Mediator filed his report dated 4th August 2025 indicating that they had failed to reach a settlement.
14. The foregoing being the case, the court is satisfied that attempts by the parties to resolve the matter out of court have come a cropper. As such, referring the cause back to mediation or other alternative dispute resolution procedures will be an exercise in futility.
15. Section 12 of the *Employment and Labour Relations Court Act* vests the court with exclusive original jurisdiction over all employment disputes including those which are to be referred to mediation. As



such, the fact that parties have not submitted their dispute to mediation does not oust the court's jurisdiction to entertain the matter.

16. The court is alive to the obligation bestowed on it by section 3(1) of the Employment and *Labour Relations Act* to facilitate the just, expeditious, efficient and proportionate resolution of disputes governed by the Act. In my view, I will not be living up to this duty if I were to refer a dispute which parties have been unable to amicably resolve back to mediation.

Disposition

17. The upshot is that the court declines to grant the application dated 18th December 2024.
18. As such, the motion is dismissed.
19. Costs of the application shall abide the outcome of the suit.

DATED, SIGNED AND DELIVERED ON THE 30TH DAY OF APRIL, 2026

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Claimant

.....for the Respondent

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

