



Bakery Confectionary Food Manufacturing & Allied Workers Union (K) v Tropical Heat Limited & another (Cause E559 of 2022) [2025] KEELRC 690 (KLR) (26 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 690 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E559 OF 2022
DKN MARETE, J
FEBRUARY 26, 2025**

BETWEEN

**BAKERY CONFECTIONARY FOOD MANUFACTURING & ALLIED
WORKERS UNION (K) CLAIMANT**

AND

**TROPICAL HEAT LIMITED 1ST RESPONDENT
BENORI AGENCIES & SERVICES LIMITED 2ND RESPONDENT**

RULING

1. This application is originated by way of a Preliminary Objection dated 20th May, 2024. It comes out thus;
 1. That this Honourable Court lacks jurisdiction to hear and determine the instant matter pursuant to the provisions of Sections 69 and 73(1) of the *Labour Relations Act*, 2007 as read together with Section 12(1) of the *Employment and Labour Relations Court Act*, 2011.
 2. That the Claim as filed is incompetent incurably defective and an abuse of the process of this court and is for dismissal with costs.
2. The objector/Respondent in her written submission dated 25th October, 2024 posits that this is a dispute between an employer and a trade union brought to court in accordance with the provision of the *Labour Relations Act*, 2007. Therefore, the courts jurisdiction is occasioned on the said Act.
3. The *Labour Relations Act*, 2007 provides as follows on resolution of disputes.
 73. Referral of dispute to Industrial Court



- (1) If a trade dispute is not resolved after conciliation, a party to the dispute may refer it to the Employment and Labour Relations Court in accordance with the rules of the Industrial Court.

4. Further, section 69 of the Act provides thus;

69. Dispute unresolved after conciliation

A trade dispute is deemed to be unresolved after conciliation if the—

- (a) conciliator issues a certificate that the dispute has not been resolved by conciliation; or
- (b) thirty-day period from the appointment of the conciliator, or any longer period agreed to by the parties, expires.

5. It is the objector submission that upon presiding over the dispute inter partes, the conciliator made the following observations;

“e. ... It is further my observation that when the company changed its name from Deepa Industries Limited to Tropical Heat Limited, the parties moved to sign a fresh Recognition Agreement in 2016. However, the union failed to make a request to the Minister for Labour for a fresh order for agency fees be deducted from Tropical Heat Limited. Being a separate entity from Deepa Industries Ltd the union should have made another fresh application from the Minister for deduction of Agency fees. The gazette Notice No. 1513 of 2011 cannot be applied in this case to procure agency fees from Tropical Heat.”

f. In view of the above observations, the prayer by the union for agency fees fails. The union is therefore advised to proceed and ensure that Tropical Heat Limited is gazetted for purposes of deduction of agency fees.”

6. The 1st Respondent submits that in the absence of any certification by the conciliator hat the dispute is unresolved in accordance with Section 69(a) of the Labour Relation Act, 2007, the conciliator’s recommendation remains as the settlement of the trade dispute on the deduction of agency fees.

7. The objector further submits as follows;

“14. 88. Now, where a trade dispute is not resolved within the timelines set in the *Labour Relations Act*, there are two avenues or possibilities, the Conciliator should issue a certificate that the dispute remains unresolved {section 69(a)} to enable the parties to move to Court. No certificate from the Conciliator has been exhibited in the instant case.⁸⁹ Where a certificate is not issued, a party suing is required to swear an affidavit stating the failure. Such affidavit should have accompanied the draft Memorandum of Claim. No such affidavit has been exhibited. ⁹⁰. The state of the present application therefore is such that the applicant did not disclose when conciliation broke down.”

8. Therefore, our circumstances propel a situation where the conciliator resolved the dispute on deduction of agency fees vide the recommendation letter dated 7th July, 2020 and therefore, this court lacks jurisdiction to adjudicate on the same by virtue of Section 73(1) Labour Relation Act, 2007.



9. The objector further sought to rely on the authority of Teachers Service Commission (TSC) v Kenya Union of Teachers (KNUT) & 3 Others [2015] eKLR where the Court of Appeal observed as follows;

“...if the dispute is unresolved after conciliation, the Conciliator issues a certificate that the dispute has not been resolved. If a dispute is not resolved after conciliation, a party to the dispute may refer it to the industrial Court and it is at that level that the court adjudication process kicks in. This is the procedure and an ideal practice as provided for by the law.

...

10. The objector in the alternative submits that the claimant has abandoned the conciliation process and approached this court prematurely. Again, whereas it is not mandatory that parties make a referral of a dispute to conciliation, once this is done, a party cannot abandon the process halfway. It should be exhausted before parties move to court. Section 54(6) of the Labour Relations Act, 2007 refers;

11. The Respondent/Applicant in the penultimate seeks to rely on the expression by Rika J on an evaluation and interpretation of Section 54(6) of the Labour Relations Act et al as follows;

“22. In my view, the correct legal position is the one expressed by Rika J. Section 54(6) of the Labour Relations Act as read with Part VIII and the provision in section 74 on urgent referral of recognition disputes to the Industrial Court has not made it mandatory for conciliation. But one the parties have taken the route of preindustrial court conciliation, the process should be exhausted before the parties move to court.

12. Again, there is no evidence adduced by the Claimant/Respondent that he informed the conciliation that it would not be acting on the recommendations of 7th July, 2020 to enable an issue of a certificate that the dispute is unresolved.

13. The objection therefore stands. The Objector has overwhelmingly presented a case of lack of jurisdiction in the circumstances of this case. Anything to the contrary would flout the provision of sections 69 and 73(1) of the Labour Relation Act, 2007 as read with Section 12(1) of Employment Act and Labour Relation Court Act, 2011.

14. I am therefore inclined to allow the application with orders that each party bears their costs of the same.

DELIVERED, DATED AND SIGNED THIS 26TH DAY OF FEBRUARY 2025.

D. K. NJAGI MARETE

JUDGE

Appearances:

1. Mr. J. B. Macharia instructed by Mukele Moni and Company Advocate for the 1st Respondent/Objector.

2. Mr. Amalemba instructed by Amelemba & Associates Advocates for the Claimant/Respondent.

