Kenya Engineering Workers Union v Met-al Masters Engineering Limited (Cause 773 of 2019) [2025] KEELRC 1611 (KLR) (29 May 2025) (Ruling)

Neutral citation: [2025] KEELRC 1611 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE 773 OF 2019

B ONGAYA, J

MAY 29, 2025

BETWEEN

KENYA ENGINEERING WORKERS UNION ..... APPLICANT

AND

MET-AL MASTERS ENGINEERING LIMITED ..... RESPONDENT

RULING

1. The claimant filed an application by a 'review notice of motion' dated 17.09.2024 under Rule 74 of the *Employment and Labour Relations Court (Procedure) Rules*, 2024 and Section 16 of the *Employment and Labour Relations Court Act*, 2016. The applicant prayed for the following orders:

    1. That, the Honourable Court deem fit and issue an order setting aside or reviewing her Judgment delivered on 26th day of July, 2024 in totality by allowing the prayers as sought in the memorandum of claim.

    2. That, costs of this application be in the cause.

    3. That, any other relief the Honourable Court may deem fit to grant.

2. The application was made upon the reasons set out therein and supported by the affidavit of Wycliffe A. Nyamwata, General Secretary, sworn on 17.09.2024. The applicant union urged as follows:

    i. The Judgment of the Court rendered on 26.07.2024 dismissed the claimant's suit because Form (S) or duly signed check off forms was not exhibited, and the conciliation was not concluded.

    ii. This application is based on account of a mistake or error, apparent on the face of the record.

    iii. The claimant had exhibited the duly signed check-off forms and the forwarding letter on pages 14 and 15 of the memorandum of claim. The dispute was reported on 05.10.2019, and the suit

was filed on 14.11.2019, about 45 days beyond the mandatory 21 days to appoint a conciliator as per section 65(1) of the *Labour Relations Act*, 2007.

iv. Whereas the Honourable Court issued protection orders after the claimant moved the Court under a certificate of urgency for the protection of her members, the respondent defiantly proceeded to declare redundancy on some of the claimant members.

v. If the orders sought in the instant application are not granted, the applicant and her members shall suffer irreparable damages.

3. The respondent opposed the application by the grounds of opposition dated 14.03.2025 filed through Njenga Sang & Company Advocates. They opposed the same on the following grounds:

a. The application is frivolous, vexatious, an abuse of the court process, intended to cause unnecessary anxiety, and constitutes an attempt to unduly influence the Court.

b. The claimant has not met the threshold of orders for review by the Honourable Court.

c. The claimant has not demonstrated any mistake or error apparent on the face of the record warranting a review of the judgment.

d. The so-called errors the claimant is alluding to are not errors on the face of the record.

e. The errors are not self-evident but would require an elaborate argument to be established and a long, drawn-out process of reasoning.

f. Judgment sought to be reviewed was issued upon full consideration of the facts, evidence and submissions of all parties and there is no justification for disturbing the same.

g. The application lacks merit and should be dismissed with costs to the respondent.

4. The parties orally submitted before the Court on 06.05.2025. The Court has considered the parties' respective positions and material on record and returns as follows:

a. It is submitted for the applicant that there is an error apparent on record when the Court found that the suit was premature because the applicant had reported a trade dispute by letter dated 05.06.2019 and the conciliator appears not to have been appointed as at 15.11.2019 when the suit was filed. It was further submitted for the applicant that the Minister failed to appoint the conciliator per section 65 of the Act and within 21 days by 27.10.2019. it is urged for the applicant that the 21 days having lapsed and the Minister having failed to appoint a conciliator, the suit was not premature. The Court has examined section 62 of the Act. Section 62(2) required the applicant to show the Minister that a copy of the dispute had been served upon the respondent. It appears to the Court that without such satisfaction, the Minister would not move under section 65(1) to appoint a conciliator. Section 65(2) and (3) entitled the Minister to seek further information about the dispute and if the Minister refused to appoint a conciliator per subsection 62(1), the Minister must supply written reasons for the refusal decision and thereafter, an aggrieved party may move the Court under a certificate of urgency. The Court considers that the applicant appears not to have step by step complied with the procedure on service upon the respondent of the dispute and after allegedly submitting the dispute to the Minister, never obtained reasons for the Minister's alleged refusal to appoint a conciliator. The Court finds that there is no error apparent on record in that respect.

b. It was submitted for the respondent that the applicant had not established a known ground for review such as error apparent on record or fresh evidence not available at the trial, even

after taking due diligence. The Court agrees. While making that finding the Court finds for the respondent that there was no evidence that form S was served upon the respondent. The Court stated at paragraph 8(b) of the judgment thus, "The record further shows that the claimant has not exhibited the duly signed form S that is alleged to have been served upon the respondent. The Court returns that on a balance of probability the respondent's case that its employees had not been recruited at all is upheld." The Court stresses that it is important for the union to show that form S was served. That the dispute reported to the Minister was served upon the employer, and that after reporting the dispute the Minister refused to appoint a conciliator per written reasons.

c. The Court returns that grounds for review have not been established and the applicant's dissatisfaction would otherwise entitle an appeal rather than a review. By urging the Court to change its opinion and reasons for the conclusions in the judgment, the applicant appears to have urged grounds of appeal. As submitted for the respondent, in the circumstances of the case and in any event, the applicant had failed to show recruitment of simple majority of unionisable employees of the respondent as a threshold for recognition per section 54 of the Act.

d. In view of continuing industrial relationships as may conclude in a recognition agreement, each party to bear own costs of application.

In conclusion the application is hereby dismissed with orders each party to bear own costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 29TH MAY, 2025.

BYRAM ONGAYA

PRINCIPAL JUDGE