



**Kenya Engineering Workers Union v Elite Lodgit Limited & another  
(Cause E655 of 2024) [2025] KEELRC 1418 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1418 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E655 OF 2024  
CN BAARI, J  
MAY 15, 2025**

**BETWEEN**

**KENYA ENGINEERING WORKERS UNION ..... CLAIMANT**

**AND**

**ELITE LODGIT LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**ASHUT ENGINEERING LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This ruling relates to the 1<sup>st</sup> Respondent's Preliminary Objection dated 4<sup>th</sup> February, 2025, seeking the dismissal of the Claimant's claim on the basis that the contract of employment subject of the suit, carries a clause requiring parties to subject any dispute arising from the said contract to mediation before invoking the jurisdiction of the court.
2. The 1<sup>st</sup> Respondent further argues that there is an active trade dispute number MLSP/LD/IR/13/46/2024 before a conciliator involving the parties herein, over the same subject matter, hence the matter is therefore duplicated in different dispute resolution fora.
3. It contends that the application and the suit are prematurely brought before the Court and should only be entertained as a last resort after the alternative dispute have failed.
4. The 1<sup>st</sup> Respondent's asserts that the employees represented by the Claimant in this matter have not exhausted the alternative dispute resolution mechanism provided under the contract.
5. Parties urged the objection by written submissions, and submissions were received from both parties, with the 2<sup>nd</sup> Respondent similarly filing submissions supporting the objection.



### **The 1<sup>st</sup> Respondent's Submissions**

6. The 1<sup>st</sup> Respondent submits that the employees represented by the Claimant have never relayed any concerns to the management of the 1<sup>st</sup> Respondent and there has never been any mediation process to resolve any dissatisfaction any employee may have had. It submits further that it is premature for the said employees to resort to court action through the Claimant herein, to address their grievances. Reliance was had to the decision in *Geoffrey Ongeru Ondimu v. Beverly School of Kenya Limited* (2020) KELRC614 KLR to buttress this position.
7. It is the 1<sup>st</sup> Respondent's submission that there is in existence an active trade dispute number MLSP/LD/IR/13/46/2024 involving the Claimant and Respondents herein, over the same subject matter of this suit, and that this is in conflict with Section 1A of the *Civil Procedure Act* which provides that the objective of the Act is to facilitate the just, expeditious, proportionate and affordable resolution civil disputes. It sought to rely in *KUDHEIHA V. Board of Management Kaimosi Teachers Training College* (2024) KEELRC 821 (KLR) where the court held that the issue could not be properly adjudicated upon by the court while it is pending consideration by the conciliator.
8. It finally submits that the subject matter of the dispute can, and should be resolved through alternative dispute resolution mechanism as the issues are already before a conciliator and that the process should proceed to its logical conclusion.

### **The 2<sup>nd</sup> Respondent's Submissions**

9. The 2<sup>nd</sup> Respondent submits that the Claimant lacks locus standi to bring this claim, since it has no recognition agreement and or collective bargaining agreement between it and the 1<sup>st</sup> Respondent. It submits further, that the union's actions are in contravention of Section 54 of the *Labour Relations Act*. It placed reliance in the case of *Kenya Union of Employees of Voluntary and Charitable Organisations [KUEVACO] v Board of Governors & Maino Wanjigi Secondary School* [2015] KEELRC 1053 (KLR) which has quoted the case of *Law Society of Kenya versus Commissioner of Lands and Others*, Nakuru High Court, Civil Case No.464 of 2000, KLR 706 to support this position.
10. The 2<sup>nd</sup> Respondent submits that the Claimant has not exhausted the avenues provided for before bringing this suit, and the same ought to be dismissed for being before the wrong fora.

### **The Claimant's Submissions**

11. The Claimant confirms that there was a trade dispute registered with the ministry of labour, but which has since been decided on. It avers that it is a fact that there is no pending matter before the Ministry of Labour after the conciliator report being released.
12. The Claimant submits that the objection does not meet the legal threshold on the basis that the Respondent has raised issues of facts touching on the clauses of the contracts of which the Claimant has alleged are breach of the law, and the CBA between the Claimant and the 2<sup>nd</sup> Respondent, hence the same shall act as miscarriage of justice if allowed.
13. The Claimant submits that the period stipulated for conclusion of conciliation had expired and parties did not agree on extension of time frame, hence the matter is properly before Court.
14. It is the Claimant's submission that after registration of a CBA it supersedes all the inferior contracts, hence the reason why parties are in Court.
15. The Claimant prays that the objection be dismissed.



## Determination

16. I have considered the objection together with the parties' submissions. The issue for determination is whether the objection has merit.
17. It is not disputed that a trade dispute was reported as arising between the parties herein, and the issue for the court is whether the conciliation process has been concluded as to allow the parties to invoke the jurisdiction of this court.
18. The 1<sup>st</sup> Respondent's argument is the conciliation process is still on and the same should be allowed to run to its logical conclusion. The Claimant on its part, contends that the conciliation process was not concluded within the period stipulated for its conclusion, and parties did not agree on extension of time, hence the matter is properly before Court.
19. The Claimant union's position is that it has a valid Recognition Agreement with the Main Employer and that both parties have negotiated several collective Bargaining Agreements (CBAs). The Union further avers that all the grievants are members of the Kenya Engineering Workers Union.
20. The Claimant has submitted a conciliation report dated 1<sup>st</sup> March, 2025, spelling out recommendations on the settlement of the dispute between the parties herein. I note however, that the suit herein was filed on 9<sup>th</sup> November, 2024, long before the conciliator reached a decision on the issue, but which in my view, is neither here nor there, the Claimant having shown that the conciliation has since been concluded.
21. In the case of *KUDHEIHA V. Board of Management Kaimosi Teachers Training College* (2024] KEELRC 821 (KLR) also cited by the 1<sup>st</sup> Respondent, the court's position was that the issue could not be properly adjudicated upon by the court while it is pending consideration by the conciliator.
22. In the instant case, there is before court a conciliator's report, which is confirmation that the conciliation process has since been concluded.
23. On whether a mediation clause is superseded by a CBA between the parties, I return in the affirmative. The dispute resolution procedure applicable to the parties herein, is that provided for under Part VIII of the *Labour Relations Act*, and having exhausted this requirement, Section 73 of the *Labour Relations Act* provides that if a trade dispute is not resolved after conciliation, a party to the dispute may refer it to the Industrial Court in accordance with the rules of the Court.
24. In the end, I find and hold that the Claimant's claim is properly before court, and the 1<sup>st</sup> Respondent's objection is devoid of merit and is dismissed.
25. Costs shall abide the cause.
26. Orders accordingly.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 15<sup>TH</sup> DAY OF MAY, 2025.**

**C. N. BAARI**

**JUDGE**

Appearance:

Mr. Makale present for the Claimant

Ms. Kioko present for the 1<sup>st</sup> Respondent



Ms. Njagi present for the 2<sup>nd</sup> Respondent

Ms. Esther S -C/A

