



Kenya Engineering Workers Union v Metal Crowns Limited (Cause E145 of 2022) [2025] KEELRC 1824 (KLR) (20 June 2025) (Ruling)

Neutral citation: [2025] KEELRC 1824 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E145 OF 2022**

**JW KELI, J
JUNE 20, 2025**

**BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
METAL CROWNS LIMITED RESPONDENT**

RULING

(Order 51 Rule 1 and Order 50 rule 5 of the Civil Procedure Rules, Section 1A, 1B and 3A of the [Civil Procedure Act](#) Cap 21 Laws of Kenya together with all the other enabling provisions of the law)

1. The applicant vide Notice of Motion dated 3rd March 2025 seeking for the following orders:-
 - a. That the Honourable court be pleased to stay any further proceedings herein pending the hearing and determination of this application.
 - b. That this Honourable Court be pleased to grant the applicant leave to file its list and bundle of documents out of time and the documents dated 3rd March 2025 be deemed to have been filed within time.
 - c. That this Honourable Court be pleased to grant the applicant leave to file its witness statement in this matter and the witness statement dated 3rd March 2025 be deemed to have been filed within time.
 - d. That this Honourable Court be pleased to grant the applicant leave to file its witness statement in this matter and the witness statement dated 3rd March 2025 be deemed to have been filed within time.
 - e. That the costs of this application be in the cause.



Grounds of the application

2. The application was based on the grounds listed therein and the annexed supporting affidavit of John Karari as follows:-
3. That the pre-trial directions have never been taken in this matter. That the documents intended to be filed were erroneously left out during filing of the response.
4. That the documents intended to be introduced are crucial to the applicant's case. Granting the orders sought shall aid the court in determining the real issue in controversy and shall not prejudice the claimant in any way.
5. The applicant filed a further application by way of certificate of urgency only dated 5th march 2025 seeking to introduce a further affidavit of John Karari of even date as follows:- That unless the court stays the proceedings pending the hearing of this application, the applicant will be highly prejudiced since the matter is already at the submissions stage. That upon perusal of the pleadings filed, it was noted that there were crucial documents that were erroneously left out during filing of the response to claim. That the said documents are crucial to this matter as they seek to support the Respondent's assertion that the applicant's employees had since resigned from the union and joined the management.
6. The application was opposed by the claimant through affidavit of Wycliffe A Nyamwata dated 20th march 2025 as follows:- That the Claimant filed her Memorandum of Claim together with an Application under Certificate of Urgency both dated 4th day of March, 2022 served upon the Respondent who entered appearance on the 5th day of April, 2022 through the firm of Kabue Thumi and Company Advocates. That the Respondent took more than six months to file grounds of opposition dated 9th day of September, 2022 to the Claimant's Application. The parties by consent proceeded to dispose off the Claimant's Application by way of written submissions of which the Application was allowed by the Court's Ruling delivered on 28th day of September, 2023. The Respondent did not comply with the Orders issued in the Court Ruling delivered on the 28th day of September, 2023 for disclosure of her audited financial statements prompting the Claimant herein to file Contempt Application dated 2nd February, 2024. The Respondent having been served with the Contempt Application, she filed an Application dated 19th February, 2024 seeking stay of proceedings pending the hearing and determination of her Application for review of the Court's Orders in the Court's Ruling delivered on the 28th September, 2023. The parties again proceeded to dispose off the Claimant's Contempt Application by way of written submissions and the same was disallowed. The Respondent only came to file her Response to the Memorandum of Claim dated 10th day of December, 2024, 34 months after instituting this suit without the leave of the Court to do so out of time hence in total breach of the Law and in particular Rule 29 of the Employment and Labour Relations Court (Procedure) Rules, 2024. That the Claimant did file her written submissions dated 5th day of March, which was done due to the consent by parties to proceed by way of written submissions after the CPMU failed to file her report in line with Rule 79 (3) of the Employment and Labour Relations Court (Procedure) Rules, 2024.
7. The claimant contended that the documents being sought to be filed are subject matter in the Claimant's written submissions hence an after-thought to make the current Application. The issue in dispute in this suit is refusal to renegotiate/review parties CBA but the documents the Application seeks to file are of no help to the subject matter as the Honourable Court has already pronounced herself on the issue of the purpose of Recognition Agreement in ELRC Cause Number 615 of 2014 at Mombasa and upheld by the Court of Appeal at Mombasa in Appeal NO. 37 of 2019. In ELRC Cause number E006 of 2024 the Honourable Court has also held the same petition and in the Ruling



delivered on 6th day of March, 2025 at Mombasa in this matter did disallow a similar Application of which we urge the Honourable Court to do.

8. The claimant submitted that the grounds upon which the Application is made are not true as the filing of submissions and judgement date was taken by consent with the current Advocates' firm on record yet they are blaming the former Advocate on their own deeds. The Respondent has filed two (2) similar Applications one dated 3rd March, 2025 and another one dated 5th day of March, 2025 seeking similar Orders hence resjudicata hence ought to be dismissed with costs to the Claimant herein. That if Orders sought in the Respondent's Application are granted then the Claimant shall be prejudiced having filed her submissions before the same is done and shall mean reopening of the suit through a backdoor. The said Application is unsustainable and ought to be dismissed forthwith with costs to the Claimant.

Decision

9. The issue was whether the application was merited.
10. Pending before the court is an undetermined memorandum of claim dated 26th august 2022 seeking for the following orders -
 - a. That, the Honourable Court deem fit and find the action of the Respondent of stopping deduction and remittance of union dues and removal of her employees from the union to unfair, unlawful and unprocedural and declare it NULL and VOID.
 - b. That the Honourable Court do hereby issue an Order against the Respondent to re- affect Union dues from all members of the Claimant who did not procedurally withdraw/resign with immediate effect.
 - c. That the Honourable Court do hereby issue an Order against the Respondent to effect agency fee from all her employees who might have officially withdrawn procedurally.
 - d. That the Honourable Court do hereby issue an Order against the Respondent to pay the Union dues/ agency fee back dated from the month of September 2021, to date which by August, 2022 stands at Ksh. 224,280/= emanating from Ksh. 18, 690/ a month for '12' months and monthly additional till when the suit shall be determined.
 - e. That, the Respondent to meet the cost of the suit.
 - f. That, any other Relief the Honourable Court may deem fit to grant.
11. The applicant sought for the following orders:-
 - a. That this Honourable Court be pleased to grant the applicant leave to file its list and bundle of documents out of time and the documents dated 3rd March 2025 be deemed to have been filed within time.
 - b. That this Honourable Court be pleased to grant the applicant leave to file its witness statement in this matter and the witness statement dated 3rd March 2025 be deemed to have been filed within time.
12. Section 20 of the *Employment and Labour Relations Court Act* provides as follows:-'20 (1) In any proceedings to which this Act applies, the Court shall act without undue regard to technicalities.' The matter has not been determined or a judgment date set distinguishing the authority relied on by the Respondent in Mombasa In ELRC Cause number E006 of 2024 . The court holds that it is in the interest of justice to allow the documents and witness statement in pursuit of substantive justice(Article 159(2)(d) of *the Constitution* (d)- justice shall be administered without undue regard



to procedural technicalities;). The Respondent /claimant are entitled to throw away costs to cater for the inconvenience/prejudice as a consequence of the issuance of the orders as held in Court of Appeal decision in Richard Ncharpi Leiyagu v Independent Electoral Boundaries Commission & 2 others [2013] eKLR. The prejudice that may be suffered by the claimant is addressed by award of throw away costs to the union of Kshs. 15,000 payable in 30 days failing which the order lapses.

13. Mention on 21st July 2025 to confirm status and issue further directions in the matter.

14. It Is so ordered.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT MACHAKOS THIS 20TH DAY OF JUNE 2025.

J.W. KELI,

JUDGE.

In the presence of:

Court Assistant: Otieno

Applicant – Ms. Odira

Claimant – Owiti standing in for Makale for the union

Ruling in Nairobi ELRC Cause No. E145 OF 2022 Page 3 | 3

