



REPUBLIC OF KENYA



KENYA LAW
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Universities Academic Staff Union v Kirinyaga University (Cause E045 of 2022) [2025] KEELRC 2225 (KLR) (23 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2225 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E045 OF 2022
DKN MARETE, J
JULY 23, 2025

BETWEEN
UNIVERSITIES ACADEMIC STAFF UNION CLAIMANT
AND
KIRINYAGA UNIVERSITY RESPONDENT

RULING

1. This matter arose out of a Preliminary Objection dated 4th October 2024 by the Respondent. It seeks to strike out the Claimant’s Memorandum of Claim dated 26th January 2022 on the grounds that the suit contravenes Sections 62(1) and 73 of the *Labour Relations Act*, Rule 5(3) of the *Employment and Labour Relations Court (Procedure) Rules*, and Section 9(2) of the *Fair Administrative Action Act*, No. 4 of 2015, for failure to exhaust alternative dispute resolution mechanisms before approaching the court.
2. The Respondent argues that the Claimant failed to report the trade dispute to the Cabinet Secretary for Labour and Social Protection for conciliation as required by law thereby rendering this suit incompetent. The Respondent relies on the case of *Kenya Shoe & Leather Workers Union v Technoplast Ltd* [2024] KEELRC 1785 (KLR), where the court struck out a suit for non-compliance with mandatory conciliation procedures and the Supreme Court’s decision in *Kenya Ports Authority v Joseph Makau Munyao & 4 others* [2023] KESC 112 (KLR) which emphasized that Section 62 of the *Labour Relations Act* mandates reporting of disputes to the Minister before court action.
3. The Claimant opposes the Preliminary Objection, asserting that the Respondent has historically disregarded conciliation processes as evidenced by the Certificate of Conciliation dated 8th October 2018 which notes the Respondent’s failure to attend a scheduled conciliation meeting on 11th September, 2018. The Claimant further cites the Court of Appeal decision in *Karen Blixen Camp Limited -v- Kenya Hotels and Allied Workers Union* Civil Appeal No. 100 of 2013 which held that referral under Section 62 of the *Labour Relations Act*, 2007 is not mandatory and that parties may



directly approach the court. This position was reaffirmed in *Kenya Engineering Workers Union v R.M. Patel & Partners* (Cause E018 of 2021) [2022] KEELRC 4035 (KLR).

4. The Claimant further argues that the Respondent's refusal to engage in mediation or negotiation, as demonstrated in the Replying Affidavit of Dr. Constatine Wasonga dated 14th October 2024 renders further attempts at alternative dispute resolution futile. The Claimant contends that the Respondent's preliminary objection is a delay tactic and an abuse of court process.
5. The Respondent counters that the Certificate of Conciliation dated 8th October 2018 pertains to a different dispute and does not absolve the Claimant of its obligation to exhaust conciliation for the current matter. The Respondent further relies on the authority of *Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others* [2015] eKLR, which underscores the doctrine of exhaustion and also that of *Republic of Kenya V Kenya School of Law & 2 others Exparte Kgaborone Tsholefelo Weekesa* [2019] eKLR, where the court held that exhaustion of internal remedies is compulsory unless exceptional circumstances are proven.
6. The Respondent also cites *Banking, Insurance and Finance Union (K) v KCB Bank (K) Limited; Dishon Ochieng Achiro and 70 Others (Interested Parties)* [2019] eKLR, where the court emphasized that disputes must first undergo conciliation before being filed in court as mandated by Section 62 of the *Labour Relations Act*, 2007.
7. Having considered the submissions and authorities cited, the key issue for determination is whether the Claimant was required to exhaust conciliation under Section 62 of the *Labour Relations Act* before filing this suit. The Court of Appeal in *Karen Blixen Camp Limited* explicitly held that Section 62 is permissive, not mandatory and does not oust the jurisdiction of the court. This precedent is binding and directly applicable to the present case.
8. While the doctrine of exhaustion is a sound principle, as articulated in *Geoffrey Muthinja and Republic of Kenya v Kenya School of Law*, the Claimant has demonstrated that the Respondent's past conduct particularly its refusal to participate in conciliation and mediation constitutes exceptional circumstances justifying the bypass of alternative dispute resolution mechanisms. The Claimant's Replying Affidavit and annexed Certificate of Conciliation provides credible evidence of the Respondent's unwillingness to engage in negotiations in good faith.
9. Moreover, the Respondent's reliance on *Kenya Shoe & Leather Workers Union* and *Kenya Ports Authority* is distinguishable as those cases involved claimants who failed to initiate conciliation altogether unlike the Claimant here, who made efforts that were thwarted by the Respondent's non-cooperation.
10. In light of the foregoing, I am inclined to disallow the Preliminary Objection dated 4th October, 2024 for lack of merit. The matter shall proceed to hearing and each party shall bear their costs of the application.

DELIVERED, DATED AND SIGNED THIS 23RD DAY OF JULY 2025.

D. K. NJAGI MARETE

JUDGE

Appearances:

Miss Sigei holding brief for Kamotho for the Objector.

Ms Nyakundi holding brief for K'ocheyo for the Claimant/Respondent.

