



Kenya Union of Commercial, Food and Allied Workers v Gusii Water and Sanitation Company (Cause 3 of 2022) [2025] KEELRC 2088 (KLR) (16 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2088 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 3 OF 2022**

**JK GAKERI, J
JULY 16, 2025**

BETWEEN

**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED
WORKERS CLAIMANT**

AND

GUSII WATER AND SANITATION COMPANY RESPONDENT

RULING

1. This case has had a long and chequered history dating back to 2017 when it was filed at Kericho and was subsequently transferred to Kisumu after Judgment had already been rendered on 21st September, 2021.
2. The Order was made by Hon. Justice O. N. Makau on 17th May, 2022, a fact the trial court informed about by Mr. Nyumba on 5th July, 2022. On the same day Mr. Nyumba informed the court that no orders had been made to the Central Planning & Monitoring Unit (CPMU) to file an Economic Report, ostensibly because the respondent had refused to comply with the Orders of the court dated 21st September, 2021.
3. The court directed Mr. Nyumba to file a formal application which he did and it was unopposed and by a Ruling delivered on 13th October, 2022 the court directed the Chief Economist Central Planning and Monitoring Unit, Ministry of Labour to analyse the proposals and file an economic report within 45 days.
4. The respondent was also directed to co-operate with the Central Planning and Monitoring Unit to facilitate the filing of an economic report.
5. Strangely, no report had been filed by 11th December, 2023 more than one (1) year after the court’s ruling and on even date, the court directed that a Notice to show cause to sue suo motu which was lifted on 5th February, 2024 when both parties were represented in court.



6. The court directed that a request for information be sent to the respondent through its advocates for purposes of preparation of the economic report by the CPMU.
7. By 6th March, 2024 no report had been filed. In its response to the questionnaire, the respondent had indicated that all its employers had decamped to another union.
8. The court directed the respondent to file and forward the questionnaire to the Chief Economist CPM for preparation of the report within 14 days of receipt of the questionnaire.
9. On 8th April, 2024, Mr. Odhiambo for the respondent informed the court that they had filed a Preliminary Objection dated 5th April, 2024 challenging the claimant's locus standi as it had no members working for the respondent.
10. Mr. Okwanyo for the Ministry of Labour reported that he had filed a report on 4th April, 2024 and copied the parties but the questionnaire had not been responded to.
11. The court directed that the Preliminary Objection be served by close of business and submissions be filed for both the Preliminary Objection and the main claim 30 days a piece and a mention slated for 5th May, 2024 by which date both parties had filed and judgment was slated for 18th July, 2024 and delivered as envisaged.
12. The court dismissed the Preliminary Objection and rendered a Judgment by which it adopted the claimant's proposals marked "A" as terms of service for the respondent's unionisable employees for 24 months effective 1st July, 2024 and the respondent was to align its terms of service accordingly within 60 days.
13. The Judgment delivered on 18th July, 2024 precipitated three applications, by the claimant, respondent and the Interested Party dated 8th November, 2024, 22nd November, 2024 and 25th November, 2024 respectively, which culminated in the setting aside of the court's judgment delivered on 18th July, 2024. The claimant's contempt application against the respondent's Managing Director was dismissed.
14. On 27th May, 2025, while Mr. Odhiambo for the respondent sought to have the matter declared closed, Mr. Nyumba sought leave to ventilate the claim on the ground that the ruling dated 31st March, 2025 did not strike out of the claim and directions on filling of submission, compliance by the respondent and Interested Party and directions were given. The Interested Party complied and a Judgment date set.
15. After a review of the court file, the court ascertained that the Judgment dated 21st September, 2021 by Hon. Justice Hellen Wasilwa determined the suit on merits and parties had filed submissions.
16. The only matter outstanding on the part of the parties was compliance with the directions of the court, principally on engagement and concluding a CBA within 60 days.
17. It is common ground that the parties did not conclude a CBA and another Judgment was delivered on 18th July, 2024 and in the claimant union's view another judgment was necessary which in the court's view would amount to an irregularity.
18. Having dismissed the claimant's contempt application dated 8th November, 2024 which was grounded on the Judgment delivered on 18th July, 2024, and, further having allowed the respondent's application dated 22nd November, 2024, setting aside the Judgment dated 18th July, 2024, the Judgment of Hon. Justice Wasilwa delivered on 21st September, 2021 is still on record and there is no Application pending before the court for determination.



19. More significantly, in its ruling delivered on 31st March, 2025 the court was satisfied that the unionisable employees of the respondent had decamped to KUWASE which had a Recognition Agreement with the respondent, the unorthodox process notwithstanding.
20. In that ruling, the court noted that the claimant, while still pursuing this case filed Kisumu ELRC No. E046 of 2024 exclusively on unremitted union dues including those pending before the instant case was filed in 2018 yet the union could have raised the issue by way of a motion or amend its pleadings. The suit was decided in favour of the claimant union.
21. Strangely however, the claimant union did not file a list of unionisable employees of the respondent who were its members in either case which indirectly fortifies the respondent and Interested Party's case that the employees had decamped to KUWASE.
22. In its ruling, the court regretted the emerging and discreditable conduct of unions competing for membership and some acting in cohorts with employers and the process which weakens the trade union movement as its focus appears to have shifted to survival as opposed to championing the rights and interests of workers, a race to the bottom, in the court's view.
23. This appears to be what happened in the instant suit where an employer was cosy with a new trade union, keeping the other on tenterhooks and posturing that it was committed to CBA negotiations.
24. Finally, as there is no application pending determination in this matter, it should finally rest.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 16TH DAY OF JULY, 2025.

DR. JACOB GAKERI

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

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