



Kenya Medical Practitioners, Pharmacists and Dentists Union v County Government of Embu (Cause E017 of 2023) [2024] KEELRC 62 (KLR) (26 January 2024) (Ruling)

Neutral citation: [2024] KEELRC 62 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
CAUSE E017 OF 2023
ON MAKAU, J
JANUARY 26, 2024

BETWEEN

KENYA MEDICAL PRACTITIONERS, PHARMACISTS AND DENTISTS UNION CLAIMANT

AND

COUNTY GOVERNMENT OF EMBU RESPONDENT

RULING

1. This ruling relates to the respondent’s Notice of Preliminary Objection dated 18th September, 2023 which stands on the following grounds: -
 - a. That this Honourable court lacks jurisdiction to adjudicate over this suit as it is grossly and incurably incompetent and bad in law as it has been instituted by an unauthorized person who lacks the requisite locus standi to commence the suit and thereby offends express provisions of the *Labour Relations Act* contained in Sections 2 and 73 (3) of the said Act.
 - b. That this Honourable Court lacks jurisdiction to adjudicate over this matter as it offends the express provisions of the *Labour Relations Act* contained in Section 59 (1) of the said Act as the alleged Collective Bargaining Agreement which forms the core of the suit is non-existent as its term has expired, has not been extended or a new one entered into.
2. The facts of the case are that the claimant union allegedly filed a memorandum of claim dated 18th August 2023, a Notice of Motion and a chamber summons dated even date. The verifying affidavit annexed to the claim plus the affidavit in support of the motion were all signed by one Kananu Kubai who described herself as duly authorized to swear the affidavits.
3. The respondent has urged the court to allow the objection since the person who instituted the suit lacks capacity to do so, and secondly, that the CBA is no longer in existence. However, the claimant is of a contrary view and contends that the suit is properly before the court since it is filed by the union as



the claimant. Besides, section 73(3) and 74(c) of the Labour Relations Act is not couched in mandatory term “shall” but “may” implying that a union has a choice to file a suit in court by any person other than the authorized person under section 2 of the Act.

4. As regards the alleged expired CBA, the claimant’s case is that the matter in dispute does not arise from the CBA. In its view the cause of action stems from the illegality of the intended action by the respondent.

Issues for determination

5. The issues for determination in the preliminary objection are:-
 - a. Whether the suit is commenced by an unauthorized person.
 - b. Whether the CBA herein is expired.

Unauthorized representative

6. Section 2 of the Labour Relations Act defines authorized representative as: -
 - “(a) The general secretary of a trade union;
 - (e) any person appointed in writing by an authorized representative of an employer, group of employers, employers’ organization or trade union.”
7. In the verifying affidavit and the affidavit in support of the motion, Ms.Kananu Kubai did not describe herself as either the general secretary of the claimant union or annex any written authority from the general secretary of the union permitting her to institute the suit.
8. Accordingly, the suit as instituted is incompetent for being instituted by an unauthorized representative of the claimant union. The suit offends section 2 (a) and (c) of the Labour Relations Act and its dead on arrival. The foregoing position was taken by the court in the case of Kenya National Union of Nurses (KNUN) v Kenya Medical Research Institute (KEMRI) & 2 others (2020) eKLR, and Kenya Union of Domestic Hotels, Educational Institutions and Hospital Workers (KUDHEIHA) V B.O.M Nyali Golf and Country Club Limited where unqualified persons initiated suits on behalf of their trade unions by signing verifying affidavits and affidavits to support motions.

Expired CBA

9. The issue of expiry of the CBA is a matter of fact that requires taking evidence. A copy has been filed as part of the pleadings, and I have verified from clause 4 that it will remain in force until it is amended or terminated mutually. The respondent has not made any allegation that the CBA was amended or mutually terminated. As already observed, that matter required taking of evidence and therefore it does not fall outside the province of preliminary objection.

Conclusion

10. I have found that the suit was initiated by an unauthorized representative of the claimant union and as such it is fatally incompetent. Consequently, I uphold the preliminary objection, and strike out the suit plus the notice of motion dated 8th August 2023 with costs.

DATED, SIGNED AND DELIVERED AT NYERI THIS 26TH DAY OF JANUARY, 2024.

ONESMUS N MAKAU



JUDGE

Order

This ruling has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N MAKAU

JUDGE

