



Kenya Union of Commercial Food and Allied Workers v London Distillers (K) Limited (Cause 914 of 2018) [2024] KEELRC 341 (KLR) (21 February 2024) (Ruling)

Neutral citation: [2024] KEELRC 341 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 914 OF 2018
DKN MARETE, J
FEBRUARY 21, 2024**

BETWEEN
KENYA UNION OF COMMERCIAL FOOD AND ALLIED WORKERS CLAIMANT
AND
LONDON DISTILLERS (K) LIMITED RESPONDENT

RULING

1. This is an application dated 28th August, 2023 and seeks the following orders of court.
 1. That this Honorable Court be pleased to stay the proceedings herein pending the hearing and determination of ELRCCBNo. 267 of 2017 London Distillers Limited v Kenya Union of Commercial Food & Allied Workers Union.
 2. That the costs of this application.
2. The application is incepted by the Respondent is grounded on the fact that the Claim as set out is premised on clauses 6 and 22 of the CBA dated 14th July, 2017. It is the applicant’s case that the impugned CBA’s process of negotiation, execution and registration was irregular, fraudulent and illegal and therefore null and void. It is therefore prudent that the legality of the CBA, including clauses 6 and 22 is disputed and awaits determination before any other proceedings are taken on the matter.
3. The applicant further posits that it is in the interest of justice and the achievement of the overriding objective of the court that this application is upheld. She puts thus;
 6. That it is in the interest of justice and achieving the overriding objective of this court in ensuring just, expeditious and efficient resolution of the disputes between the parties.
4. The Union opposes the application. It is her contention that there no clarity as to which CBA the applicant is complaining about in the application dated 22nd February, 2022. It is her case that



the Respondent/Applicant has filed a Notice of Motion application dated 22nd February, 2022 challenging a CBA allegedly registered and entered in the Register of Collective Agreement as RCA No. 267 of 2017. Here, the Respondent/Applicant alleges this CBA exists between the parties herein and was effective on 1st May, 2015 and is dated 14th July, 2017. It was registered on 18th October, 2017, she further alleges.

5. However, the Respondent/Applicant did not and has not has yet provided the alleged registration certificate RCA No. 267 of 2017 to ascertain which CBA they are referring to as the one they have enclosed in the previous Notice of Motion application is not registered as RCA No. 267 of 2017.
6. In the midst of this confusion on the referral CBA, the Respondent Union adduced that even if the orders registering the CBA effective on 1st May, 2015 were to be declared null void and reviewed or set aside, there will still be in place the parties a CBA effective 1st May 2013 duly registered to govern employees terms of service and therefore there would be no vacuum whatsoever.
7. The respective cases of the parties are a display of lack of clarity as to the impugned CBA. It would appear that the Respondent/Applicant in this application does not come out clear as to which particular CBA she has issue with and therefore the futility of the application.
8. The Respondent/Applicant has not ably controverted the Respondent's case and submissions on the application therefore the application must fail.
9. I am therefore inclined to dismiss the application with orders that each party bears their costs of the same.

DELIVERED, DATED AND SIGNED THIS 21ST DAY OF FEBRUARY 2024.

D. K. NJAGI MARETE

JUDGE

Appearances:

Mr. Chadianya instructed by Gichina, Macharia, Matotse & Co. Advocate for the Respondent/Applicant.

Mr. Nyumba for the Respondent Union.

