



**Communication Workers Union of Kenya v Wananchi Group (Kenya)
Limited & 3 others (Employment and Labour Relations Cause
E024 of 2022) [2024] KEELRC 282 (KLR) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 282 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E024 OF 2022
MN NDUMA, J
FEBRUARY 15, 2024**

BETWEEN

COMMUNICATION WORKERS UNION OF KENYA CLAIMANT

AND

WANANCHI GROUP (KENYA) LIMITED 1ST RESPONDENT

ISAT AFRICA KENYA LIMITED 2ND RESPONDENT

SIMBANET COMMUNICATION LIMITED 3RD RESPONDENT

WANANCHI TELECOM LIMITED 4TH RESPONDENT

RULING

1. The applicant filed a notice of motion application dated 5/06/2023 seeking for orders in the following terms:
 - a. That the Honourable Court be pleased to expunge from its record the conciliation report dated 6th April, 2023.
 - b. That this Honourable Court be pleased to order for fresh verification exercise to be undertaken in accordance with the terms of the order issued on 15th February, 2023 and dated 16th February, 2023.
 - c. That the costs be provided for.
2. The application is premised on grounds 1 to 13 set out on the face of the application the nub of which is that the Ministry of Labour in preparing the report filed before court did not follow the orders of the court dated 16/2/2023 in that they only had heavily relied upon the conciliation report prepared



by Mr. Jacob Gatimu and the letter dated 20/12/2021 and hence did not address whether the union had met the requisite threshold as at December, 2021 or February 2013.

3. The applicant is devastated with the report and prays it be expunged from the court record.
4. The claimant/respondent filed a replying affidavit sworn on 24th August 2023 in opposition to the application in which the deponent states that the respondents have jumped the gun by attempting to pre-empt a report prepared pursuant to the court order made on 15/2/2023.
5. That there is nothing wrong with the maker of the report relying on the conciliation report with regard to the membership of the union since the conciliator had relied on check-off forms duly furnished to him. In any event the report is only a tool requested by the court to assist it in evaluating the facts of the case to reach a fair decision.
6. Without getting to the merits or demerits of the report, the court is of the finding that the respondent/applicant is out of order in attempting to pre-empt the filing and consideration of a report specifically requested for by an order of the court dated 15/2/2023.
7. It is pre-mature and dilatory tactic for the applicant to try to pre-empt the court from considering this report together with all depositions and submission to be filed by the parties to assist the court reach a fair and just decision upon considering the recognition dispute on its merit.
8. The court finds that this application is an abuse of the court process, lacks merit and is dismissed with costs.

MATHEWS N. NDUMA

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 15TH DAY OF FEBRUARY, 2024

Appearances

Mr. Kamotho for respondent/applicant

Mr. Bundotich for claimant/respondent

Ekale: Court Assistant

