



**Dockworkers Union v Kenya Ports Authority; DCIO Central Police
Division Mombasa (Interested Party) (Miscellaneous Application
E025 of 2023) [2024] KEELRC 290 (KLR) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 290 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
MISCELLANEOUS APPLICATION E025 OF 2023
AK NZEI, J
FEBRUARY 15, 2024**

BETWEEN

DOCKWORKERS UNION APPLICANT

AND

KENYA PORTS AUTHORITY RESPONDENT

AND

DCIO CENTRAL POLICE DIVISION MOMBASA INTERESTED PARTY

RULING

1. On a date that I cannot discern from the Court’s record as presented, the Applicant filed a Notice of Motion dated 7/6/2023 seeking the following orders:-
 - a. that this Court do issue an order directed to the Deputy Registrar of this Honourable Court to produce certified copies of the Replying Affidavit of the 3rd, 4th, 5th, and 7th Respondents sworn on 20/8/2021 and filed in Court on 27/8/2021 in Judicial Review Application No. E004 of 2021, and all the annexures thereto, and that the same be remitted to the DCIO, Mombasa Central Police Division.
 - b. that this Court do issue an order directing the Respondent to allow the Interested Party to access all employment records of Nancy Akeyo Osanjo (the grievant herein) of Personal Number C/No. 562998 held by the Respondent, for connected purpose.
 - c. that costs be borne by the Respondent.
2. The application is based on the supporting affidavit of Simon Kiprono Sang sworn on 7/6/2023. It is stated in the said affidavit:-



- a. that Nancy Akeyo Osanjo was an employee of the Respondent until 4/6/2021 when she was dismissed from employment.
 - b. that until her dismissal, the grievant was a member of the Applicant Union, the Applicant being the only Union recognized by the Respondent, and mandated to represent all Unionisable employees of the Respondent.
 - c. that the grievant has alleged that the Respondent conspired to dismiss her on account of her having acted as a whistle blower on corruption related cases, and that her dismissal was meant to cover up corruption by named officers.
 - d. that between 2015 and 2016, some 130 employees of the Respondent were dismissed following investigations and disciplinary proceedings regarding employees believed to have been employed and/or sustained their employment contracts on the basis of forged academic qualifications.
 - e. that it has turned out that documents used to defend the grievant's Judicial Review Application No. E004 of 2020 were manufactured and/or falsified to assist the Respondent to rid (get) the grievant out of employment.
 - f. that it is only through Criminal Justice System that it can be determined whether manufactured documents were used to defend the case presented by the grievant, and that it is only the Interested Party which has power to investigate whether any offence was committed; and to prefer charges.
3. On 10/7/2023, the Respondent filed a Notice of Preliminary Objection on points of law and stated:-
 - a. that this Court lacks jurisdiction to hear and to determine the matter as the dispute herein is not one of those contemplated under Section 12 of the [Employment and Labour Relations Court Act](#), 2011.
 - b. that the Court lacks jurisdiction in the first instance since the Application has been made against express provisions of Sections 56 and 57 of the [Data Protection Act](#), the statute under which the application is purportedly anchored.
 - c. that the Applicant does not have the requisite *locus standi* to institute and to prosecute the Notice of Motion dated 7/6/2023, and that the suit herein is fatally defective, incompetent and an abuse of the Court's process.
 4. The Court directed that the Preliminary Objection be heard first, and directed parties herein to file written submissions thereon. Written submissions were filed by the Respondent and the Applicant. The Interested Party never filed any document.
 5. The Respondent submitted that the application herein purports to be an offshoot of Mombasa ELRC JR No. E004 of 2021, which was heard and determined by the Court, with judgment being delivered on 1st July 2022 (Ongaya, J). That after the grievant's interlocutory application before the Court of Appeal was dismissed on 16th December 2022 (Civil Application No. E048 of 2020), the grievant never prosecuted her intended appeal. That the grievant now purports, through her former Union, to file the proceedings herein, which are substantively inclined on alleged Criminal culpability in as far as handling of her data is concerned.
 6. I have perused copies of this Court's judgment delivered on 1st July 2022 in this Court's Judicial Review Application No. E004 of 2021 (Ongaya, J) and the Court of Appeal's Ruling delivered on 16th



December 2022 in that Court's Civil Application No. E048 of 2022. I have noted from the said two decisions that the grievant in the application before me, Nancy Akeyo Osanjo, is no longer an employee of the Respondent, having been dismissed prior to the institution of this Court's said Judicial Review Application No. E004 of 2021. Indeed, termination of the grievant's employment was the subject matter in the Judicial Review proceedings. The grievant has not addressed the Court on what became of the appeal that she intended to lodge in the Court of Appeal against this Court's said judgment.

7. In the present application, the grievant's former Union (the Applicant herein) is asking this Court to make orders that would see the Interested Party undertaking criminal investigations into the validity/authenticity of documents filed by the Respondent and its Managers/officials in opposition to the said determined Judicial Review proceedings.

8. This Court is a specialized Court, and its jurisdiction is circumscribed in Section 12 of the *Employment and Labour Relations Court Act*. Section 20(4) of the said *Act* provides as follows:-

- “(4) For purposes of dealing with any matter before it, the Court may by order in writing signed by or on behalf of the Court require any person to-
- a. Furnish in writing or otherwise, such particulars in relation to such matters as it may require,
 - b. Attend before it.
 - c. Give evidence on oath or otherwise; and
 - d. Produce any relevant documents.”

9. From the foregoing, it is crystal clear that this Court has wide powers regarding presentation of evidence in matters before it, and may require/summon any person to produce any relevant documents. And, yes, the Court may even give orders regarding verification of authenticity or otherwise of documents presented in a matter before it, if such issue is raised by any party to the suit.

10. The suit in which the alleged forged documents were produced/filed is long determined, and is not before this Court. the Court has no jurisdiction to give the orders sought by the Applicant. The grievant should have raised the issues she is raising now in the suit wherein the alleged forged documents were filed, and during the hearing/prosecution of the same. Further, there does not exist an employment relationship between the grievant and the Respondent, Kenya Ports Authority. The Respondent referred the Court to the case of *Casmur Nyankurus Nyaberi v Mwakikar Agencies Limited* [2016] eKLR where the Court stated:-

- “8. The jurisdiction of the Employment and Labour Relations Court as far as employment matters are concerned is limited by the existence of an employment relationship as defined in law, and the Court must always satisfy itself on this account before proceedings any further.”

11. As already stated in this Ruling, issues touching on termination of the greivant's employment were canvassed and determined by this Court on 1st July 2022 (Ongaya, J). The grievant has not demonstrated the existence of a subsequent employment relationship between herself and the Respondent. This Court has no jurisdiction to entertain, to hear and to determine the application herein.



12. Having made that finding, I will not delve into the issue of whether or not the Applicant has the requisite locus standi to bring the present application, as this will be a mere academic exercise. The application is an abuse of this Court's process, and is hereby struck off.
13. Each party will bear its own costs of the application.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 15TH FEBRUARY 2024

AGNES KITIKU NZEI

JUDGE

Order

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable

Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

.....Applicant

.....Respondent

