



**London Distillers (K) Limited v Kenya Union of Commercial Food & Allied Workers
(CBA 257 of 2017) [2024] KEELRC 357 (KLR) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 357 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CBA 257 OF 2017
MN NDUMA, J
FEBRUARY 15, 2024**

BETWEEN

LONDON DISTILLERS (K) LIMITED APPLICANT

AND

**KENYA UNION OF COMMERCIAL FOOD & ALLIED
WORKERS RESPONDENT**

RULING

1. The applicant filed a notice of motion application dated 22/2/2022 seeking an order in the following terms:
 1. That this Honourable Court be pleased to declare that the process of negotiation, execution and registration of Collective Bargaining Agreement between the parties expressed to be effective from 1st May 2015 was irregular, fraudulent and illegal and thereby the entire Collective Bargaining Agreement is null and void.
 2. That the Honourable Court be pleased to review and set aside the orders dated 18th October, 2017 registering the Collective Bargaining Agreement dated 14th July, 2017.
 3. That the costs of the application be borne by the respondents.
2. The application is premised on grounds 1 to 11 set out on the face of the application and buttressed by the supporting affidavit of Mulan Galut a Director of the applicant.
3. The butt of the application is that the CBA the subject of the application was brought to court erroneously since it had items that were not part of the negotiations carried out by the parties and so these items were not agreed upon and cannot constitute negotiated terms and conditions of service of the unionisable employees of the applicant.



4. That the CBA is irregular, illegal and the court do review its orders dated 18/10/2017 in which it registered the CBA dated 14/7/2017.
5. The respondent filed a notice of preliminary objection dated 14/4/2022 to the application dated 22/2/2022 to wit:
 1. That the application as filed is bad in law, incompetent, misconceived and is an abuse of the court process.
 2. That the Collective Bargaining Agreement dated 14th July, 2017 effective 1st May 2015 for twenty four (24) months is not registered as RCA No. 267 of 2017.
 3. That the application violates Rule 4(1) and (2) and Rule 14(4) of the Rules of this court as there is no claim before the court upon which the application is grounded and that there is no verifying affidavit.
 4. That the application is fatally defective, frivolous and is an abuse of the court process and ought to be dismissed with costs.
6. The court at the outset, notes that in terms of the Employment and Labour Relations Court (procedure) Rules, 2016, and in particular Rule 4(1) and (2) and 14(4), an interlocutory application such as the one before court may only be filed together with a substantive suit, be it a claim, petition, or judicial review application. A suit cannot be commenced by an unanchored application seeking final orders.
7. The court further notes that the applicant in an application filed on 22/2/2022 seeks to have orders of this court, made on 18/10/2017 more than four (4) years from the date of the said orders reviewed or set aside. The application is visited with inordinate delay and on this ground alone constitutes an abuse of court process since it is way beyond the three (3) years limitation period within which disputes emanating from contracts of employment may be filed before this court.
8. The court has considered the deposition and submission by the parties and uphold the preliminary objection by the respondent union.
9. Accordingly, the application dated 22/2/2022 is struck out for being an abuse of court process and the applicant being guilty of laches. Applicant to pay costs of the application

MATHEWS N. NDUMA

JUDGE

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

Appearances

Mr. Ogembo for Applicant

Mr. Nyumba for Respondent

Kemboi: Court Assistant

