



Onyango v Special Economic Zones Authority; Chelule (Interested Party) (Employment and Labour Relations Petition E066 of 2023) [2024] KEELRC 659 (KLR) (20 March 2024) (Judgment)

Neutral citation: [2024] KEELRC 659 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E066 OF 2023
MN NDUMA, J
MARCH 20, 2024**

BETWEEN

ALLAN MONROE ONYANGO PETITIONER

AND

SPECIAL ECONOMIC ZONES AUTHORITY RESPONDENT

AND

KENNETH CHELULE INTERESTED PARTY

JUDGMENT

1. The respondent and the interested party raised preliminary objection to the petition in the following terms:-
 - a. The instant petition was wholly withdrawn vide the notice of withdrawal dated 12TH April 2023 filed in court by the petitioner. There is therefore no valid suit before this honourable court.
 - b. The amended petition dated 17th April 2023 purportedly filed to amend the withdrawn suit is bad in law and should be struck out.
 - c. Notwithstanding the foregoing, this honourable court lacks jurisdiction to hear and determine the petition and application as the petitioner herein has no locus standi either under section 12 of the *Employment and Labour Relations Court Act*, 2014 or under Article 22 and 258 of the *Constitution* of Kenya, 2010.



2. The respondent raised a further preliminary objection on 19th September 2023 on the grounds that:
The instant petition is sub judice in view of ELRC Petition No. 2 of 2023: Allan Monroe Onyango v Special Economic Zones Authority pending before Kisumu Law Courts.

3. The parties filed written submissions and the court has considered the objections seriatim.

Withdrawal:

4. The respondent has submitted that the petition was wholly withdrawn by the notice of withdrawal dated 12/4/2023 filed in court by the petitioner.

5. That the petitioner then proceeded to file an amended petition on 17/4/2023. That a party cannot amend a petition that has already been withdrawn. That there is no suit capable of hearing and determination before court therefore the court should down its tools upon striking out the amended petition as an abuse of court process.

6. In the case of *Kofinaj Company Limited and another v Nabashon Ngige Nyaga and 20 others* [2017] eKLR, the court held that the question as to whether a notice to withdraw suit under order 25 Rule 1 require the endorsement of court before becoming effective is now chartered waters. The court relied on the Court of appeal decision in *PIC Kenya Ltd v Joseph Orrong* [2001] eKLR where the court found that:-

7. The plaintiff in that suit did not need the leave of court to withdraw his suit nor was a court order necessary to give effect to the withdrawal”

8. It is submitted by the objector that the petitioner upon filing the notice of withdrawal dated 12/4/2023 terminated the suit wholly and no suit was therefore available to be amended as the petitioner has done.

9. The petitioner submits that it made an inadvertent mistake in the title of the pleadings as “In the Employment And Labour Relations Court In Kisumu” but it filed the case in Nairobi where it was indeed intended to be filed. The court upon noticing the mistake ordered the matter be transferred to Kisumu.

10. The petitioner then withdrew the said suit in Kisumu and filed the instant one here in Nairobi. That the case in Kisumu stands withdrawn and the pleadings were not served on the respondents.

11. The court has however perused the notice of withdrawal dated 12/4/2023 which reads as follows:-

In the Employment and Labour Relation Court at Nairobi Elrc Pet E020 of 2023

Allan Monroe Onyangopetitioner

v

The Special Economic Zones Authority.....respondent

Dr. Kenneth Chelule.....interested Party

Notice Of Withdrawal

Take Notice that the petitioner herein has withdrawn the whole of the petition against the respondent and the interested party.

Dated at Nairobi this d12th day of April 2023

Dennis Anyango & Associate Advocate For The Petitioner.”



12. This notice of withdrawal is wholly in respect of the present matter before court and does not make any reference to a matter in Kisumu.
13. The petitioner is therefore not candid with the court and the notice aforesaid is *res ipsa locuitar* (speaks for itself).
14. The petitioner did not apply to have the petition reinstated but proceeded to operate as if the suit he had withdrawn was still in existence.
15. The court finds that the petition E061 of 2023 aforesaid having been withdrawn by the petitioner is no longer available for hearing and determination by this court.
16. The non-existent petition was also not available for amendment because same does not exist.
17. The court upholds the preliminary objection and deems the petition wholly withdrawn and incapable of any amendment as the petitioner purported to do on 17/4/2023.
18. The amended petition dated 17/4/2023 purportedly filed to amend the withdrawn suit is bad in law and is struck out.
19. The court has no facts before it to determine existence of a similar suit being ELRC Petition No. 2 of 2023. *Allan Monroe Onyango v Special Economic Zone Authority pending before Kisumu Law Courts.* The Nairobi suit is non-existent and so the issue of *subjudice* does not arise in view of the determination of the first point above.
20. The suit having been withdrawn after interim orders had been issued, the matter of contempt of court application dated 2nd May, 2023 does not arise.
21. This application remains moot in view of the striking out of the petition in its entirety. The parties bear their own costs of the petition.
22. It is so ordered

DATED AT NAIROBI THIS 20TH DAY OF MARCH 2024

Mathews Nderi Nduma

JUDGE

Appearance:

Mr. Onyango for petitioner

Mr. Mulili for respondent and interested party

Mr. Kemboi Court Assistant

