



Kenya Petroleum Oil Workers Union v Green Wells Energies Ltd (Cause E059 of 2023) [2024] KEELRC 1012 (KLR) (17 April 2024) (Ruling)

Neutral citation: [2024] KEELRC 1012 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E059 OF 2023**

**S RADIDO, J
APRIL 17, 2024**

**BETWEEN
KENYA PETROLEUM OIL WORKERS UNION CLAIMANT
AND
GREEN WELLS ENERGIES LTD RESPONDENT**

RULING

1. On 6 December 2023, the Court delivered a judgment in which it held that the Kenya Petroleum Workers Union (the Union) had failed to prove its case asserting that its right to organise and collective bargaining had been violated. The Court also held that it could not assume first instance jurisdiction over a Counterclaim brought by Green Wells Energies Ltd (the Respondent) in respect to a recognition agreement
2. The Union was not satisfied and it filed a Motion on 16 January 2024, seeking orders:
 - i. ...
 - ii. That the Honourable Court be pleased to review and/or vary or set aside and/or clarify its judgment given on 6 December 2023.
 - iii. That the Honourable Court be pleased to order a technical report from the Central Planning and Monitoring Unit of the Ministry of Labour.
 - iv. That the costs of this application be borne by the Respondents.
3. The main grounds in support of the application were that the attempts by the parties to negotiate before action had been futile; there was discovery of new evidence in that the Respondent had applied to the National Labour Board to revoke the recognition agreement between the parties; the collective bargaining agreement in place was about to lapse and that the Court had failed to address the real issue in dispute and therefore there was an error apparent on the face of the record.



4. Despite service, the Respondent did not respond to the Motion nor appear for directions on 4 March 2024. The Union filed its submissions on 14 March 2024. The Respondent filed its submissions on 8 April 2024, in which it explained why it had not attended Court.
5. The Court has considered the Motion, affidavit in support and the submissions from both parties.
6. The fact that the Respondent has moved the National Labour Board is a fact which is not relevant to the present proceedings. It cannot be a matter of new evidence warranting the Court to exercise its review jurisdiction.
7. The Court declined to allow the remedies prayed for by the Union on the ground that the Union had not proved its case to the required standard.
8. The Court gave its reasoning at paragraph 25 thus:

Despite and in spite of calling upon this Court to adopt its proposals, the Union did not put before this Court any evidence of the relevant factors outlined in the Court of Appeal judgment nor did it seek the assistance of the Court to get an expert report or opinion from the Central Planning and Monitoring Unit of the Ministry of Labour.

9. The Instant Motion seeks the Court to alter not only the order declining the reliefs sought, but to alter its reasoning.
10. Where a Court has misapprehended the facts or the law or failed to consider an issue, the window open to the party who is dissatisfied is to prefer an Appeal to a higher Court, and not to invoke the review powers of the Court.
11. In this regard, it is worthwhile to quote the guide by the Court of Appeal held in *National Bank of Kenya Ltd v Ndungu Njau* (1996) KLR that:

In my discernment, an order cannot be reviewed because it is shown that the Judge decided the matter on a foundation of an incorrect procedure and or that his decision revealed a misapprehension of the law or that he exercised his discretion wrongly in the case. Much less could it be reviewed on the ground that all other of co-ordinate jurisdiction and even the judge whose order is sought to be reviewed have subsequently arrived at different decisions on the same issue. In my opinion the proper way to correct a Judge's alleged misapprehension of the procedure or the substantive law or his alleged wrongful exercise for discretion is to appeal the decision unless the error can be apparent on the face of the record and therefore requires no elaborate argument to expose.

12. The Motion herein does not meet the threshold for the exercise of the Court's review jurisdiction.

Orders

13. The Motion filed in Court on 16 January 2024 is found without merit and is dismissed with no order on costs since the Respondent did not participate in the application.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 17TH DAY OF APRIL 2024.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances



For Union Mr Okoth, General Secretary
For Respondent Owiti, Otieno & Ragot Advocates
Court Assistant Chrispo Aura

