



**Kenya Union of water and Sewerage Employees (KUWASE) v Attorney General & another;
Proposed Water Service Worker Union & 7 others (Interested Parties) (Employment and
Labour Relations Petition E188 of 2023) [2024] KEELRC 1295 (KLR) (24 May 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1295 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

EMPLOYMENT AND LABOUR RELATIONS PETITION E188 OF 2023

AN MWAURE, J

MAY 24, 2024

BETWEEN

**KENYA UNION OF WATER AND SEWAGE EMPLOYEES
(KUWASE) PETITIONER**

AND

ATTORNEY GENERAL 1ST RESPONDENT

REGISTRAR OF TRADE UNIONS 2ND RESPONDENT

AND

PROPOSED WATER SERVICE WORKER UNION INTERESTED PARTY

PATRICK KASIMU INTERESTED PARTY

CHARLES MAKINI INTERESTED PARTY

FAITH WANGARI KIMEMIA INTERESTED PARTY

KIMEMIA INTERESTED PARTY

VICTOR ONYANGO ONG'OL INTERESTED PARTY

FRANCIS MUIYO KAIA INTERESTED PARTY

GRACE NJOROGE INTERESTED PARTY

RULING

1. The 1st to 8th Interested parties filed a notice of preliminary objection dated 19th February 2024 in opposition to the Petition dated 3rd October 2023 on the following grounds:



- a. The Petition filed herein is premature, misconceived, fatally defective, incompetent, frivolous, vexatious, and an abuse of the process of this Honorable Court and thus should be struck out
 - b. The 1st Interested Party is yet to be registered as a trade union per the provisions of Sections 13 and 19 of the Labour Relations Act
 - c. The Petitioner is yet to exhaust the existing mechanisms provided in law and specifically the provisions of Section 14 of the Labour Relations Act.
2. The 1st – 8th interested parties state that requirements for a trade union are as per section 14(d) of the Labour Relations Act which provide that Registrar shall by notice in the gazette and in the National Daily Newspaper with wide circulation notify any.

“any registered trade union, federation of trade unions or employer’s’ organizations which appear to him to represent the same interest as the applicants of the receipt of such application and shall invite the registered trade union federation of trade unions or employers’ organization concerned to submit in writing, within a period to be specified in the notice, any objections to the registration.

3. The applicant says the complaint by the petitioner that the name of 1st interested party is similar to the petitioners and there is another union representing the Water sector is premature as it can only be considered after application for registration has been presented to the 2nd respondent for registration under section 18(4) and 20 of Labour Relations Act.
4. And that even if the 2nd respondent had registered the 1st interested party the petitioner would still have preferred an appeal, under section 30 of Labour Relations Act. The 1st-8th interested parties therefore pray the court to strike out the petition as it has not exhausted the existing remedies available and so is an abuse of the court process.
5. The authorities on preliminary objections includes the famous case of *Mukbisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd* 1969 EA 696 where the court held:

“A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the Jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.... A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion”

6. The court finds that the first grounds are based on facts as the 1st-8th interested parties claim the petition is premature and misconceived and should be stuck out. There is no law referred therein to support the allegation and the court would have to call for evidence to determine that allegation.
7. The issue raised on ground two is that the 1st interested party is yet to be registered as a union. Hence, this is also not a point of law and there would be need to get evidence to establish the facts raised.
8. On the third ground, the respondents have raised the question of the doctrine of exhaustion.



9. In the case of *Geoffrey Muthinja and another v Samuel Muguna Henry and 6 others* (2015) eKLR, the Court stated as follows:

“We see this as the crux of the matter in this and similar cases. It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews within churches, as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside of courts. This accords with Article 159 of the *Constitution* which commands Courts to encourage alternative means of dispute resolution.

We find and hold that the exhaustion doctrine applies even where, as was argued by the appellants herein, what is sought to be challenged is the very authority of the organs before whom the dispute was to be placed. We think there were sufficient safeguards in place for a valid determination of the various plaintiffs’ disputes had they filed them within the church set up. And there was always the right, acknowledged by the learned Judge, of approaching the courts after exhaustion of the church mechanisms. By failing to do so, and quite apart from the force of their apprehensions, the appellants effectively failed to exhaust their remedies and essentially short-circuited the process by filing suits prematurely.”

10. The respondents aver that the Petitioner has not utilized the provisions of the Labor Act:

14 no other trade union already registered is—

(d)

- i. in the case of a trade union of employers or of employees, sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the applicants seek registration; or
- ii. in the case of an association of trade unions, sufficiently representative of the whole or a substantial proportion of the trade unions eligible for membership thereof:

Provided that the Registrar shall, by notice in the Gazette and in one national daily newspaper with wide circulation, notify any registered trade union, federation of trade unions, or employers’ organizations that appear to him to represent the same interest as the applicants of the receipt of such application and shall invite the registered trade union federation of trade unions or employers’ organization concerned to submit in writing, within a period to be specified in the notice, any objections to the registration;



11. Section 18(4) states:

If the proposed name of a trade union, employers' organization or federation is the same or sufficiently similar to that of an existing organization so as to mislead or cause confusion, the Registrar shall—

- (a) request the applicant for registration to alter the name of the trade union or employers' organization or federation; or
- (b) not register the trade union, employers organization, or federation until a suitable alteration has been made.

20. Refusal to register a trade union, employers' organization or federation

If the Registrar is not satisfied that a trade union, employers' organization or federation meets the requirements for registration and refuses the application for registration, the Registrar shall advise the trade union, employers' organization or federation of the reasons for that refusal in Form D set out in the Second Schedule.

30. Appeals against decision of Registrar

Any person aggrieved by a decision of the Registrar made under this Act may appeal to the Employment and Labour Relations Court against that decision within thirty days of the decision.

12. The Court finds the grounds raised by the 1st-8th interested parties to strike the petitioners application are actually not all points of law but are matters that will need to be litigated and the Court will need to make a determination. In that case the preliminary objection application has not been proved and so is unmerited and is dismissed.

13. Costs of the application will be in the cause.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 24TH DAY OF MAY, 2024.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.



ANNA NGIBUINI MWAURE
JUDGE

