



**Kenya Building Construction Timber and Furniture Industries Employees Union v Mulji Devraj & Brothers Limited (Cause E034 of 2024) [2024] KEELRC 1567 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1567 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E034 OF 2024**

**M MBARŪ, J  
JUNE 13, 2024**

**BETWEEN  
KENYA BUILDING CONSTRUCTION TIMBER AND FURNITURE  
INDUSTRIES EMPLOYEES UNION ..... CLAIMANT  
AND  
MULJI DEVRAJ & BROTHERS LIMITED ..... RESPONDENT**

**RULING**

1. The ruling herein relates to the Notice of Preliminary Objections dated 21<sup>st</sup> May 2024 filed by the respondent, Mulji Devraj & Brothers Limited. The objections are that;  
The Notice of Motion application dated 22<sup>nd</sup> April 2024;
  1. This court lacks jurisdiction to hear and determine this application because the present suit offends Section 69(a) and 73(1) of the Labour Relations Act, 2007 since there is a duly appointed conciliator who is seized of the matter.
  2. The appointed conciliator has not issued a Certificate that the dispute has not been resolved by conciliation.
2. The parties attended and made oral submissions.
3. The respondent submitted that the claimant had violated the provisions of Section 69(a) and 73(1) of the Labour Relations Act, 2007 (the LRA) by filing this claim while the conciliation process was ongoing and no Certificate has been issued hence denying the court the requisite jurisdiction. Due to ongoing negotiations concerning the disagreed clauses of the collective agreement (CBA), there is no resolution yet. Several meetings have been held and the claimant has moved to court to force the respondent to agree to its terms.



4. The respondent submitted that the objections herein are based on a point of law as required under the principles *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969]EA 696 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 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.

5. For the court to determine the suit at this stage, the court will be forced to go into the facts of the case particularly matters which the conciliator should resolve. Before such a process can conclude, this suit is premature under the LRA provisions.
6. The claimant submitted that the objections by the respondent do not meet the threshold under the case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969]EA 696. To determine the objections, the facts in dispute must be considered. Section 69(b) of the LRA relates to where a conciliator fails to issue a report within 30 days and under Section 2 of the LRA a union can file suit if the conciliator fails to file a report or issue parties with a Certificate thereof. For the court to determine the suit, the court will have to go back to facts subsisting as of 19 October 2022 when the certificate was to be issued to determine the essence of the cited provisions of the law. To determine the objections the court will be required to ask the claimant why the claim was filed at this stage hence there are no proper objections before the court and should be dismissed with costs.

### **Determination**

7. On 24 April 2024, the claimant filed a Memorandum of Claim together with the Notice of Motion dated 22 April 2024. The application is seeking urgent orders in the nature that this court do issue orders pending the hearing of the main suit compelling the respondent to negotiate and conclude the review of the CBA between the parties and further that the respondent be compelled to pay the minimum wage to its various categories of employees.
8. The Memorandum of Claim seeks that;  
  
An order to issue directing the respondent to participate and conclude the negotiations of the 6 disputed clauses of the 2016-2017 CBA in consideration of the minimum wage guidelines.
11. Both parties agreed there were ongoing negotiations before the conciliator.
12. The claimant has given a chronology of events concerning the review of the CBA for the period of 2016-2017 which lapsed on 31 December 2017 and despite the claimant sending a proposal on 18 April 2018, parties have not concluded a CBA leading to the claimant reporting a dispute to the Minister on 17 February 2022 and a conciliator was appointed thereof.

Section 69 of the LRA requires that;

A trade dispute is deemed to be unresolved after conciliation if the—

- (a) conciliator issues a certificate that the dispute has not been resolved by conciliation; or
- (b) thirty day period from the appointment of the conciliator, or any longer period agreed to by the parties, expires.



13. The respondent has relied on Section 69(a) of the *LRA*. The full clause is in two parts. 69(a) requires the conciliator to issue a certificate that the dispute between the parties has not been resolved while Section 69(b) requires the conciliator to resolve the dispute before the office be resolved within 30 days unless parties agree to a further period to resolve the matter.
14. The dispute reported to the Minister on 17 February 2022 has not been resolved.
15. The reasons leading to non-compliance with Section 69 in full must be gone into by the court by calling of evidence.
16. The respondent cannot justify reliance on Section 69(a) in the absence of any certificate not being issued and the lapse of 30 days under Section 69(b) of the *LRA*.
17. Regarding the provisions of Section 73(1) of the *LRA*, without adherence to the provisions of Section 69 to the full, application of Section 73(1) cannot be applied to lock out the claimant from filing suit with the court.
18. The objection by the respondent noted above do not raise questions of law that can be applied to determine the claim instantly. There is a need for a call for evidence.
19. This put into account, the court seized of the matter, both parties acknowledging the ongoing negotiations as incomplete, a court-regulated process is imperative. The claimant shall secure a date with the conciliator within the next 7 days and inform the respondent to allow for a meeting before the conciliator therefrom and a report be filed with the court within 30 days. Where the respondents fail to oblige as invited, the claimant is to proceed and secure the report and or certificate and to report to the court as appropriate.
20. Objections by the respondent are without merit and are hereby dismissed. Costs to abide by the outcome of the main claim.
21. As directed above, mention on 22 July 2024 for further directions. The claim is placed in abeyance to allow the Orders and directions above.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 13 DAY OF JUNE 2024.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

