



Jomo Kenyatta University of Agriculture and Technology v University Academic Staff Union & another (Cause E743 of 2024) [2024] KEELRC 2803 (KLR) (14 November 2024) (Ruling)

Neutral citation: [2024] KEELRC 2803 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E743 OF 2024
L NDOLO, J
NOVEMBER 14, 2024**

BETWEEN

JOMO KENYATTA UNIVERSITY OF AGRICULTURE AND TECHNOLOGY CLAIMANT

AND

UNIVERSITY ACADEMIC STAFF UNION 1ST RESPONDENT

UNIVERSITY ACADEMIC STAFF UNION (JKUAT CHAPTER) 2ND RESPONDENT

RULING

1. By its Notice of Motion dated 4th September 2024, the Claimant seeks the following orders:
 - a. A temporary injunction restraining its employees who are members of the Respondents from participating in the strike called by the Respondents and from interfering with the Claimant’s operations;
 - b. An order directing the Respondents to call off the strike forthwith and an order directing its employees who are members of the Respondents to resume work immediately;
 - c. An order declaring the strike called by the Respondents in its notice dated 26th August 2024, unlawful and unprotected.

2. The Motion is supported by an affidavit sworn by the Claimant’s Acting Deputy Vice Chancellor (Administration & Finance), Prof. Daniel Sila and is based on the grounds that:
 - a. On 24th June 2024, the Respondents issued a notice of their intention to withdraw labour until their concerns are addressed;



- b. On 17th July 2024, the Ministry of Labour, through the Chief Industrial Relations Officer, issued a letter to the Claimant and the Respondents, directing that the trade dispute between the parties be resolved amicably through consultative dialogue. The letter further dictates that the Respondents immediately suspend the strike notice and await the outcome of the envisaged conciliation, as the dispute resolution mechanism has already been set in motion;
 - c. Despite the directive from the Ministry of Labour, the Respondents proceeded to issue a memo on 26th August 2024, informing its members that the strike would proceed on 2nd September 2024;
 - d. The appointed Conciliator, vide a letter dated 27th August 2024, invited the parties to a meeting on 2nd September 2024, to assist in amicable resolution of the dispute. In his letter, the Conciliator further emphasised that the Union was to suspend any industrial action, pending the outcome of the dispute resolution mechanism in place;
 - e. Notwithstanding multiple directives and attempts to resolve the matter amicably, it is evident that the directives issued have been met with notable absence of compliance or acknowledgment on the part of the Respondents as they threaten to continue with the strike;
 - f. The actions of the Respondents have paralysed the activities of the Claimant to ensure quality education to Kenyans;
 - g. The intended strike is illegal and unprotected as the trade dispute was referred to conciliation and is contrary to Section 78 of the *Labour Relations Act*;
 - h. The application is made in good faith and in the interest of justice.
3. The Respondents oppose the Claimant's application by two replying affidavits, one sworn by the 1st Respondent's National Secretary General, Dr. Constantine Wasonga on 11th September 2024 and another by Dr. Shadrack Muya on 11th October 2024.
 4. Dr. Wasonga depones that the 2nd Respondent, being a Branch of the Union, has no capacity to be sued as it is not a corporate entity under the *Labour Relations Act*. He therefore maintains that the application is bad in law.
 5. Dr. Wasonga further depones that under Article 42(2) (d) of *the Constitution* of Kenya, the Respondents' members have a right to go on strike.
 6. On his part, Dr. Muya accuses the Claimant of reluctance to subject itself to conciliation, thus necessitating the issuance of the strike notice.
 7. The Respondents' focus as evidenced in the two replying affidavits filed in court, appears to be on the question whether the 2nd Respondent is a proper party in these proceedings. In my view however, the real question in this application is whether the strike called by the Respondents is lawful.
 8. Looking at the pleadings and supporting documents filed by the parties, it is evident that there is a real grievance between the parties. This Court is also aware of the right of workers to engage in industrial action, as guaranteed under Article 41(2)(d) of *the Constitution*.
 9. However, Part X of the *Labour Relations Act* provides an elaborate procedure to be observed by any party wishing to invoke the right to go on strike. This procedure includes exhaustion of conciliation as a means of resolving the dispute at hand.



10. In the present case, the dispute was referred to conciliation but the parties did not exhaust that process. Any industrial action at this stage would therefore be contrary to Section 78 of the *Labour Relations Act*.
11. In their submissions, the Respondents suggest that the time limit for conciliation has lapsed. There is evidence however, that the Respondents themselves delayed the conciliation process by skipping meetings called by the Conciliator. They cannot therefore seek to benefit from a delay to which they have contributed.
12. In the circumstances, I will suspend the strike notice and direct the parties to proceed with and conclude the stalled conciliation process.
13. The Conciliator is directed to submit his report to this Court within the next thirty (30) days from the date of this ruling.
14. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 14TH DAY OF NOVEMBER 2024

LINNET NDOLO

JUDGE

Appearance:

Ms. Kithinzi for the Claimant

Mr. Kariuki h/b for Mr. Koceyo for the 1st Respondent

Mr. Muigai for the 2nd Respondent

