



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Kenya Engineering Workers Union v Devik Steel Mills Limited (Cause E042 of 2024) [2024] KEELRC 13515 (KLR) (19 December 2024) (Ruling)

Neutral citation: [2024] KEELRC 13515 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E042 OF 2024
K OCHARO, J
DECEMBER 19, 2024

BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
DEVIK STEEL MILLS LIMITED RESPONDENT

RULING

Background

1. Through a Notice of Motion application dated 24th May 2024, expressed to be under the provision of section 12 of the *Employment and Labour Relations Court Act* and Section 74 of the *Labour Relations Act* 2007, the Claimant/Applicant seeks: -
 - a. That this matter be heard ex-parte in the first instance and be certified urgent and heard on a priority basis.
 - b. That the Honourable Court deem it fit to invoke rule 37 of the *Employment and Labour Relations Court (Procedure) Rules*, 2016 by directing the Central Planning and Monitoring Unit (CPMU) Ministry of Labour to file a report in the Honourable Court within 30 days.
 - c. That any other orders the Honourable Court may deem fit be granted.
 - d. That the cost of the application be in the cause.
2. The application is premised on the grounds obtaining on the face of the application, the supporting affidavit sworn by Wycliff A. Nyamwata on 24th May 2024, and the further affidavit sworn by him on 26th June 2024.
3. The Respondent opposed the application through the replying affidavit of Justin M. Musyoka dated 20th June 2024.



4. When the matter was placed before the Court on 8th July 2024 the Court gave directions for filing of respective submissions for and against the application. As of 5th November 2024, the Respondent had not complied with the directions. At its instance, the Court gave it a further leave of seven days to comply and file its submissions. To date, it has not.

The application

5. The application is grounded on the following prime grounds.
- i. Rule 37(1) of the *Employment and Labour Relation Court (Procedure) Rules*, 2016 contemplates the issuance of an order like the one sought.
 - ii. If the order sought is granted no party shall be prejudiced as each of them shall be allowed an opportunity to present its views to CPMU before it prepares the report.

The opposition of the Respondent

6. The Respondent opposed the application on the following grounds as can be deduced from the replying affidavit mentioned hereinabove thus: -
- a. The Claimant's application is an abuse of the Court process, a fishing expedition, vexatious, flagrant abuse of the process and full of non-disclosure of material facts.
 - b. The application is a non-starter as it is not dated.
 - c. That the Claimant/Applicant and the representatives of the union participated in a conciliation initiated by a letter of invitation dated 8th May 2023 by the Ministry of Labour and Social Protection, a process that had been triggered by the Claimant union.
 - d. In compliance with the invitation, the respondent's two representatives attended a conciliation meeting on 6th November 2023 before the appointed conciliator, Mr. Laurent Mulwa. The issue in dispute was discussed at length but not concluded.
 - e. During the last meeting on 23rd November 2023, the Conciliator directed parties to avail all their respective documents in support of their rival positions and that the next date for a further meeting was to be communicated.
 - f. As of 23rd November 2023, the parties had not reached a final resolution or engagement on the dispute before the conciliator. No further proceedings ensued thereafter
 - g. It was surprising to learn the existence of the certificate of unresolved dispute dated 8th May 2024 which, unlike the rest of the previous documents which bear the name of the author, the certificate did not have the name of the conciliator authoring the certificate.
 - h. Doubting the authenticity of the certificate of unresolved dispute dated, the respondent wrote a letter dated 14th May 2024 seeking access to the records and minutes relating to the conciliation process and which letter despite being received by all parties on 20th May 2024 did not receive any response.
 - i. The Claimant/Applicant relies on the certificate that the respondent holds as a fraudulent document as a basis for the application herein.
 - j. The Applicant has not therefore legally exhausted the mechanism provided under the conciliatory process and as such this Court cannot intervene.



Analysis and Determination

7. This Court notes that the Applicant in the further affidavit and the Respondent in the replying affidavit, raised matters that clearly do not go into addressing the instant application but the substantive suit. This Court will be cautious enough not to venture into the space of predetermining the main suit at this interlocutory stage or appearing to do so, as a result of this.
8. This Court appreciates the pivotal role that the CPMU plays in a just and expeditious disposal of economic disputes in the spirit of collaborative justice. Further, their aid can come in various matters with different circumstances. Therefore, their reports cannot be said to be standardized or uniform for all matters. Therefore, where a party to a dispute desires to have the CPMU prepare and present a report and applies for an order of the Court to enable that, such party is enjoined to be very clear on what it wants the report to contain in the context of the dispute. Therefore, it cannot suffice for the party to just pray that the CPMU be directed to give their report.
9. I have carefully considered the application and the affidavits in support of the same, and I am unable to get the basis laid therein for the need for, and the scope of, the report required. With this situation, I am not convinced that the instant application is fit to be granted. it is hereby dismissed. Each party to bear its costs.
10. Orders accordingly.

READ, SIGNED AND DELIVERED THIS 19TH DAY OF DECEMBER 2024.

OCHARO KEBIRA

JUDGE

In the Presence of:

Mr. Wambua the Respondent

No appearance for the Claimant

