



**Public Transport Operators (Workers) Union Kenya v Aramex Kenya Limited & another; Transport and Allied Workers Union (Interested Party) (Cause 2028 of 2017) [2023] KEELRC 876 (KLR) (14 April 2023) (Ruling)**

Neutral citation: [2023] KEELRC 876 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 2028 OF 2017  
NJ ABUODHA, J  
APRIL 14, 2023**

**BETWEEN**

**PUBLIC TRANSPORT OPERATORS (WORKERS) UNION  
KENYA ..... CLAIMANT**

**AND**

**ARAMEX KENYA LIMITED ..... 1<sup>ST</sup> RESPONDENT  
CABINET SECRETARY, MINISTRY OF EAST AFRICAN COMMUNITY,  
LABOUR & SOCIAL SERVICES ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**TRANSPORT AND ALLIED WORKERS UNION ..... INTERESTED PARTY**

**RULING**

1. By a motion dated August 17, 2022, the Claimant/Applicant moved the Court for orders in the main that the application dated August 25, 2021 dismissed for want of prosecution be reinstated and be heard de novo (sic).
2. The application was supported by the affidavit of one Fenus Okonji and based on grounds among others that he (Okonji) having been taken ill and eventually hospitalized at around the time the application was filed was cardinal and overriding reason. It would have therefore not been possible for him to prosecute the matter as expected.
3. The Applicant further alleged that the pending suit had great potential of being rendered nugatory and would be an academic exercise if the contempt application was not reinstated and heard. It was also alleged that it would be an exercise in futility for the Court to proceed to have a main suit heard with one party having shown contempt for the orders of the Court that issued them.



4. The 1<sup>st</sup> Respondent through one Hazel Kamau filed a replying affidavit to the application and stated in the main that:

- (i) The Application is incurably defective in Law having been executed by a “stranger” other than the deponent and it is in entirety an afterthought and cleverly crafted to mislead this Honourable Court into granting orders that defeat the course of justice.
- (ii) In response to Paragraph 2 of the Affidavit, I wish to state that:-
  - (a) A look at the hospital documents from Kenyatta National hospital which have been annexed to the Claimant’s Application, show that the deponent was discharged from hospital on January 22, 2022.
  - (b) The Application dated August 25, 2021 was dismissed on by Court April 26, 2022 which is three (3) months after he was discharged.
  - (c) It is therefore misleading for the Claimant to allege that during the time his Application came the Court, he was in hospital and thus the instant Application is an afterthought.
- (iii) In response to Paragraph 3 and 4 of the Applicant’s Affidavit, I have been informed by my advocates, which information I verily believe to true, that the hearing notice for the Claimant’s Application which came up in Court on April 26, 2022, was duly served upon the Applicant as follows;
  - (a) The Hearing Notice was duly served upon the Applicant on April 19, 2022 at their offices, which Notice was received through a one David, who signed and stamped the hearing Notice.
  - (b) Additionally, the Applicant was also served electronically through email on April 21, 2022, through their official email address as provided in the Claimant’s statement of claim.
- (iv) In response to Paragraphs 5 and 6 of the Affidavit, I wish to state that the Claimant does not have any members employed by the 1<sup>st</sup> Respondent, and indeed the instant Application and entire Claim have been overtaken by events and ought to be struck out
- (v) In response to Paragraphs 7, 8 and 9 of the Applicant’s Affidavit, It is not true that the 1st Respondent is in contempt of any Court Orders, and reiterate that the Claim herein has been overtaken by events and ought to be struck out.
- (vi) Further, the Claimant has had a history of delay in the matter. The Court will note that the Application dated August 22, 2021, which the Applicant seeks to reinstate, was filed on August 21, 2021 after two years of inactivity in prosecuting its claim, and thus the instant Application is merely intended to frustrate and embarrass the 1<sup>st</sup> Respondent.



5. The Interested Party also filed a replying affidavit dated September 16, 2022 in which it stated among others that:
- (i) Pursuant to Section 8(1) & (2) and Section 33 of the *Employment & Labour Relations Court (Procedure) Rules, 2016* the Claimant Application dated August 17, 2022 is time barred after being filed 4 months after the judgement/ ruling taking place.
  - (ii) The Claimant's application for contempt proceedings dated August 25, 2021 was certified Urgent by the Hon Court on September 3, 2021 and was dismissed for want of prosecution on April 26, 2022 and as such; a Review/ Appeal or any other action "was required to be made within 30 days from the dated the Court made its final decision.
  - (iii) 4<sup>th</sup> - the major ground(s) advanced for the review of the judgment is premised on one Mr Fenus Okonji being sick/unwell but the same ground is not factual. Documents attached to the Claimant Application dated August 17, 2022 indicate that - Mr Okonji was admitted at Kenyatta National Hospital on December 31, 2021 and discharged on January 22, 2022; a period of 23 days.
  - (iv) Claimant's application was filed on August 25, 2021, Heard on September 2021, September 23, 2021 and on October 18, 2021. Then Mentioned on March 14, 2022- (No appearance for Claimant). Thereafter heard on April 5, 2022-(7Vh appearance for Claimant) and finally heard and dismissed on April 26, 2022.
  - (v) No hearing or mention of the Claimant's Application dated August 25, 2021 took place during Mr Fenus Okonji sickness between December 31, 2021 and January 22, 2022.
  - (vi) The ground(s) of review of the Judgement/Ruling premised on sickness of one – Mr Fenus Okonji is a lie, not supported by any document and is misplaced.
6. A perusal of the Court record shows that on December 20, 2017, Lady Justice Hellen Wasilwa issued directions among others that status quo be maintained. Neither the Learned Judge nor the parties elaborated on what the status quo as at December 20, 2017 was.
7. The Claimant herein had on October 10, 2017 filed a claim and concurrently therewith a notice of motion.
8. In the motion, one of the orders sought by the Applicant was a declaration compelling the 1<sup>st</sup> Respondent to cause immediate release/remittances of all the deducted trade union dues for the month of September 2017 in respect of the Claimant union.
9. The Applicant further sought an order compelling the 2<sup>nd</sup> Respondent to allow continuity by arbitration of the Claimant's trade dispute MEACLSP/LD/IR/28/1/2017 before the appointed conciliator Ms. Helen Maneno.
10. From the above, the status quo strictly speaking was that the Respondents were not doing or performing any of the matters forming the basis of the Motion dated October 10, 2017. It was therefore not clear which status quo was being maintained as at December 20, 2017.



11. The Court makes the above observations very guardedly since there is real risk of being perceived as deciding the contempt application. The above comments are meant to assist the Court in deciding whether there is merit in reinstating the contempt application which was dismissed on April 26, 2022.
12. Interlocutory applications have the tendency of prolonging and confusing matters which in most cases are straight forward and could be decided by the Court in the shortest time possible if interlocutory interventions were minimized.
13. The matter was filed on October 10, 2017, more than five years ago. The Court has looked at the orders sought in the claim and noted that they revolved around check off forms, deduction of union dues and recognition of the Claimant Union. These are matters that are time sensitive and require to be decided as quickly as possible. It is therefore unfortunate that more than five years down the line, the parties herein are still grappling with interlocutory applications.
14. The deponent to the affidavit in support of the application dated August 17, 2022, seeking reinstatement of the application dated August 25, 2021 which was dismissed for want of prosecution has alleged at paragraph 2 thereof that he was taken ill hence could not prosecute the application dismissed. From the documents attached to his affidavit, it is shown that he was discharged on January 22, 2022. The application dated August 25, 2021 was dismissed on April 26, 2022. More than three months after the discharge of Mr Fenus Okonji from hospital. No indication or allegation was made that upon discharge he remained unable to carry out his normal duties or remained on bed rest and for how long.
15. The Court further notes that the contempt application was filed on September 3, 2021 and dismissed on April 26, 2022 more than six months after filing. No reasonable explanation has been given by the Applicant why it took so long to prosecute such an application which alleged disrespect for the Court.
16. From the foregoing, the Court is not impressed with the conduct of the Claimant/Applicant herein and will therefore not exercise its discretion in its favour. The application dated August 17, 2022, is therefore hereby dismissed with costs.
17. The parties are hereby encouraged to seriously consider the age of this matter and endeavor to set the same down for hearing instead of engaging in time consuming interlocutory applications.
18. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 14<sup>TH</sup> DAY OF APRIL 2023**

**ABUODHA JORUM NELSON**

**JUDGE**

**In the presence of:-**

**Okech for the 1<sup>st</sup> Respondent**

**Ndege for the Interested Party**

