



**Kenya Chemicals and Allied Workers Union v Milly Glass Works Limited (Employment and Labour Relations Cause 421 of 2017) [2023] KEELRC 1555 (KLR) (21 June 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1555 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**EMPLOYMENT AND LABOUR RELATIONS CAUSE 421 OF 2017**  
**MA ONYANGO, J**  
**JUNE 21, 2023**

**BETWEEN**  
**KENYA CHEMICALS AND ALLIED WORKERS UNION ..... CLAIMANT**  
**AND**  
**MILLY GLASS WORKS LIMITED ..... RESPONDENT**

**RULING**

1. The application dated June 6, 2022 has been brought by the Applicant/Claimant. It seeks for orders that;
  - i. Spent
  - ii. That the Honourable Court do issue an order compelling the Respondent herein to implement the Collective Bargaining Agreement as judged by the Honourable Court on February 8, 2019 and registered in this Honourable court on April 20, 2022.
  - iii. That in failure of compliance by the Respondent herein in observance of the prayer sought in Clause 2 above, the court be pleased to issue an order of execution for Notice to Show Cause why execution should not issue by committing the directors and/or authorized concerned agents and assigns of the Respondent to civil jail
  - iv. That the costs of the application be provided for.
2. The application is supported by the affidavit of Peter Ouko Onyango, the National General Secretary of the Applicant union sworn on June 6, 2022.
3. The grounds upon which the application is made are contained in the supporting affidavit and on the face of the application. In brief the Applicant aver that the parties herein signed a Recognition Agreement following a court order of December 15, 2013 which paved way for negotiation of a



- Collective Bargaining Agreement; that the parties did not agree on some clauses during negotiations and on April 16, 2018, the court directed the parties to negotiate on contested issues in the CBA;
4. That the parties agreed on almost all issues but could not agree on clause 2, on working hours and the effective date of the CBA; that the court through its judgment of February 8, 2019 dealt with the contested issues;
  5. That the Respondent thereafter failed to sign and ratify the Collective Bargaining Agreement as judged by this Honourable court on February 8, 2019 and the Applicant through an application dated January 24, 2020, moved this court for orders compelling the Respondent to sign and ratify the Collective Bargaining Agreement; that the Honourable Court on December 1, 2020, delivered a ruling on the abovementioned application and ordered the Respondent to sign the CBA as negotiated and as determined by the court within 30 days from the date of the ruling.
  6. The court further ordered that should the Respondent fail to sign the CBA, the union to move to court in terms of section 20 of the *Employment and Labour Relations Court Act* for summoning of the director of the Respondent to appear before the court to show cause why he should not be punished for disobedience of court orders;
  7. That the Respondent failed to obey the said court orders and the applicant's union approached the court again with an application dated January 24, 2021 seeking an order compelling the Respondent to sign and ratify the Collective Bargaining Agreement as judged by this court on February 8, 2019 and also sought an order for notice to show cause by the Respondent for failure to comply with the order; that on December 10, 2021, the court delivered a ruling and found the Respondent to be in disobedience of the previous court order and directed that Mr Mohamed Rashid appears in court on February 1, 2022 to show cause why he should not be punished for disobedience of court orders requiring him to sign the CBA within 30 days from December 1, 2020; that on February 17, 2022, the Respondent's director, Mr Mohamed Rashid appeared before court for sentencing and was fined Kshs 5,000 and undertook to sign the CBA;
  8. That the Respondent's director despite signing the CBA refused to implement the same despite being notified of the registration of the CBA through a letter dated April 25, 2022.
  9. The Applicant states that unless this Honourable Court intervenes and grants the orders sought herein, the union members who are the Respondent's employees will be highly prejudiced.
  10. The application is opposed by the Respondent vide grounds of opposition dated June 20, 2022. In the grounds the Respondent avers that the court is functus officio having already dealt with the terms of the CBA and compelling the signing of the CBA; that the implementation or non-implementation of the signed CBA is a different cause of action which cannot be tried in this suit; that the negotiation or non-negotiation of a fresh CBA is a different cause of action which cannot be tried in this suit and lastly, that to entertain the issues raised by the application would be a departure from the pleadings and to determine issues beyond pleadings.
  11. The court directed the application to be disposed of by way of written submissions. The Applicant filed submissions dated August 17, 2022 and the Respondent's submission are dated October 14, 2022.

### **Analysis and Determination**

12. The Respondent was on December 10, 2021 found guilty of contempt of this court's orders delivered on December 1, 2020 directing the Respondent to sign the collective bargaining agreement whose implementation is the subject of the instant application. The record further reflects that on February 17, 2022 the matter came up for sentencing of the Respondent's Managing Director Mr Mohamed



Rashid. That after noting that the said Managing Director was remorseful, and after he stated that the Respondent had complied with the court orders, the court fined him Kshs 5,000.

13. Specifically, the court made orders that:

In view of the fact that the Contemnor is remorseful and has complied with the court orders, and for the sake of good industrial relations of the Claimant and the Respondent the Contemnor is fined to pay Kshs 5000 or serve 7 days in civil jail in default, and warned that any future contempt of court orders will be dealt with more severely.

14. The matter is back in court because the Respondent has yet again refused to implement the CBA. In its grounds of opposition in the instant application the Respondent contends that this court is *functus officio* having dealt with the terms of the CBA compelling the signing of the Collective Bargaining Agreement.

15. The Court of Appeal in *Telkom Kenya limited v John Ochanda (suing on his own behalf and on behalf of 996 former employees of Telkom Kenya limited)* [2014] eKLR, defined the doctrine of *functus officio* as;

“*Functus officio* is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon.”

16. Does the instant application amount to re-opening of a matter that the Court had already made a final decision on?

I do not think so.

17. The suit herein was originally filed following a deadlock in the negotiation of the first collective bargaining agreement between the parties herein. After the court determined the issues that the parties were unable to agree on, the Applicant came back to court to compel the Respondent to sign the collective bargaining agreement, which it only signed after being found guilty of contempt of this court’s orders to the effect that the CBA be signed in 30 days.

18. The Respondent has yet again refused to implement the CBA that it was compelled by the court to sign, this time arguing that the court is *functus officio*, that this is a new cause of action and that the Applicant ought to file a fresh dispute for the enforcement of the CBA.

19. What would be the point of having a Collective Bargaining Agreement that cannot be implemented? Ordinarily, it is expected that after a Collective Bargaining Agreement has been registered by the Court, the same would be implemented.

20. The Respondent’s contention that the Claimant ought to file a fresh suit, when he knows that he is under a legal obligation to implement the CBA, is clearly an abuse of court process. He seems to be saying “I know I am under obligation to implement the CBA but I am not doing so unless I am ordered by the court. Go file another suit so that the court can order me to implement.”

21. Section 3A of the *Civil Procedure Act* vests in the courts inherent powers to make any orders as may be necessary for the ends of justice to be met or to prevent abuse of the process of the court.

22. There are already several court orders in this file all related to the CBA. Section 59 of the *Labour Relations Act* is explicit about the effect of registration of a CBA. By the Respondent insisting on the Claimant going to court to enforce the law over a matter that has been litigated since 2017, he is in breach of section 59(5) of the Act which compels an employer to implement the CBA upon registration. The section provides that:



A collective agreement becomes enforceable and shall be implemented upon registration by the Industrial court and shall be effective from the date agreed upon by the parties.

23. Section 59(3) expressly provides that the terms of the CBA are automatically incorporated into the contract of employment of every employee covered by the CBA by operation of the law.
24. The agreement having been registered by the court, the Claimant does not need further court orders for the implementation of the same. To demand that the Claimant goes to court to obtain fresh orders in a separate suit to implement the CBA is not only absurd, but a deliberate disobedience of both the law and the court order in view of the fact that the registration and implementation of the CBA are provided for in the same sentence in the Act. They cannot constitute different causes of action as contended by the Respondent. In fact, a new suit on the same issue would be res judicata as the court has already made a determination on the issue of implementation of the said CBA.
25. For the foregoing reasons the application dated June 6, 2022 succeeds and I accordingly make the following orders:
  - i. The Respondent is hereby directed to immediately implement the Collective Bargaining Agreement as judged by the Honourable Court on February 8, 2019 and registered in this Honourable court on April 20, 2022;
  - ii. Should the Respondent fail to implement the CBA within 30 days the Claimant is at liberty to approach the court to issue a Notice to Show Cause against the directors and authorized officers of the Respondent to show cause why they should not be committed to civil jail for persistent disobedience of this court's orders;
  - iii. Should this become necessary the court will take into account the notoriety with which the Respondent has handled this matter.
  - iv. The Respondent shall pay Claimant's costs of this application.
26. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 21ST DAY OF JUNE, 2023.**

**MAUREEN ONYANGO**

**JUDGE**

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