



**Kenya Engineering Workers Union v M/S Abyssina Iron & Steel Limited
(Cause 13 of 2022) [2023] KEELRC 1568 (KLR) (22 June 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1568 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 13 OF 2022**

**AK NZEI, J
JUNE 22, 2023**

**BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
M/S ABYSSINA IRON & STEEL LIMITED RESPONDENT**

RULING

1. The application before me is the Claimant’s Notice of Motion dated 17th November 2022. The application is not shown to be brought under any law or Rule of procedure, and the following orders are sought:-
 - a) an order compelling the conciliator in the Trade Dispute between the parties herein (M.W. Rabongo) from Kisumu County Labour Office to appear in Court as a witness in this matter during the hearing.
 - b) that an order be issued against the Respondent to produce the list of NSSP(possibly meant NSSF) and NHIF contributors for Athi River and Mariakani, and separate certificates of registration of her plants at Kisumu, Athi River and Mariakani as separate entities before the hearing of the suit.
 - c) that the Court do issue an Order expunging all the undated check-off forms (Form “S”) at pages 23 to 27 of the Claimant’s Memorandum of Claim from record.
2. The application sets out on its face the grounds upon which it is brought, and is based on a supporting affidavit of Wycliffe A. Nyamwata sworn on 17th November 2022. It is stated in the said supporting affidavit:-
 - a) that the orders sought are provided for in section 20 of the [Employment Act](#).



- b) that a conciliator was appointed to conciliate parties herein on issues of non-compliance with section 48 of the *Labour Relations Act* by way of deduction and remittance of union dues.
 - c) that it is clear from the Respondent's profile that the Respondent's registered name is Abyssina Iron and Steel Limited, with her head office in Nairobi County and manufacturing facilities in Athi River, Kitengela, Mariakani, Awasi, Kisumu and Eldoret in Kenya.
 - d) that through Kenya Gazette Notice Vol. CXXI- No.59, the Respondent acquired her Mariakani Plant from Top Steel Limited.
 - e) that the allegations of separate entities are meant to deny the Claimant's members and /or the Respondent's unionisable employees at Athi-River and Mariakani Plants enjoyment of benefits as a result of Kisumu ELRC No. 31 of 2019.
3. The application is opposed by the Respondent vide a Replying Affidavit of Ravi Gada sworn on 20th December 2022.
 4. It must be noted that in this Court's Ruling delivered on 3rd November 2022, I directed parties herein to fix the suit for hearing and determination. The present application was filed fifteen days after delivery of the said Ruling.
 5. In an adversarial case system like ours, parties are obligated to prepare their respective cases and to file all the documents that they intend to rely on at trial. Indeed, rule 4(1) of the *Employment and Labour Relations Court (Procedure) Rules* 2016 states that a statement of claim must set out, among other things, a schedule listing the documents that are material and relevant to the claim.
 6. Once a suit has been set down for hearing, a party to the proceedings may, during the proceedings, apply for summoning by the Court of any person and/or witness whose attendance the party considers to be material. Indeed, section 20(4) & (5) of the *Employment and Labour Relations Court Act* provides as follows:-
 - “ 4. For the purpose of dealing with any matter before it, the Court may by order in writing signed by or on behalf of the Court require any person to:-
 - a) Furnish in writing or otherwise, such particulars in relation to such matters as it may require;
 - b) attend before it
 - c) give evidence on oath or otherwise; and
 - d) Produce any relevant document.
 - (5) an order made under subsection (4) may include a requirement as to the date on which or the time within which the Order is to be complied with.”
 7. It is to be noted that this Court exercises specialized jurisdiction.
 8. It is not clear why the Claimant chose to file the present application instead of fast tracking its suit and fixing it for hearing at the earliest opportunity. The orders sought by the Claimant cannot be granted at this stage, and in the manner sought regarding a suit whereby even pre-trial directions are yet to be taken. Court orders are never given at large or in vain. Court orders have the force of law and are given for specific purposes and are meant to be obeyed in the manner specified in the order, and within parameters of the applicable law. Summoning of witnesses or persons to appear before the Court for



purposes of producing documents can only be done during the trial, and after parties have filed all their documents and pre-trial directions have been taken.

9. Further, a party who, for whatever reason, is unhappy with any evidential document filed by him or her can always withdraw such documents and seek the Court's leave to file proper and/or further documents, depending on the facts and circumstances of the case in issue and the nature of documents involved. In the present case, the Claimant is asking the Court to strike off evidential documents that it filed together with the memorandum of claim. The Court cannot be called upon to help a Party in Court proceedings to shape up its case. Let parties herein put their respective houses in order.
10. I find no merit in the Claimant's Notice of Motion dated 17th November 2022. The application is premature and is an abuse of this Court's process, and is hereby struck off with no order as to costs.
11. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 22ND JUNE 2023

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

N/A for Claimant

Mr. Waiyaki for Respondent

