



**Union of Veterinary Practitioners Kenya, Taita Taveta Branch v County Public Service Board & another (Cause E018 of 2022) [2023] KEELRC 1479 (KLR) (8 June 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1479 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E018 OF 2022**

**M MBARÚ, J**

**JUNE 8, 2023**

**BETWEEN**

**UNION OF VETERINARY PRACTITIONERS KENYA, TAITA TAVETA  
BRANCH ..... CLAIMANT**

**AND**

**COUNTY PUBLIC SERVICE BOARD ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY GOVERNMENT OF TAITA TAVETA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The respondents filed Notice of Preliminary Objections dated December 5, 2022 on the grounds that Memorandum of Claim dated March 21, 2022 should be struck out *in limine* on the grounds that;
  1. The claimant has no *locus standi* to commence and maintain the claim herein.
  2. The claim is premature, incurably defective and cannot stand in law.
  3. The suit and application as filed are in complete contravention of the mandatory provisions of Article 159(2) (c) of the Constitution, Section 15 of the Industrial Court Act and Section 56(5), 73(1) of the Labour Relations Act.
  4. The suit and application filed herein offend the doctrine of exhaustion.
  5. The suit is in abuse of court process and an affront to mandatory provisions of the law and should be dismissed with costs.
2. On several occasions the matter was mentioned but the claimant has remained absent. No interest has been shown in this matter and on March 28, 2023, Counsel for the claimant indicated that he was now conflicted since he is in the panel of the respondents attorneys and would organise and have the claimant appoint another advocate. On April 18, 2023 the respondent's Counsel attended



and directions were issued to file written submissions. On May 30, 2023 the matter was mentioned to confirm the filed submissions but none had been filed and Counsel for the respondent attending applied to have the objections allowed and suit dismissed.

3. The objections are on points of law, the ruling herein is found necessary.
4. What can be discerned from the objection without any submissions by the parties is;
  - Whether the claimant has locus standi to file this claim;
  - Whether the claim is premature;
  - Whether the claim is in contravention of Article 159(2)(c) of the Constitution, Section 15 of the Employment and Labour Relations Court Act, 2011 and sections 54(6) and 73(1) of the Labour Relations Act, 2007; and
  - Whether the suit offends the doctrine of exhaustion.
5. In the memorandum of Claim, the issue registered as being in dispute is the refusal to sign the Recognition Agreement, intimidation and harassing union members. The orders sought are that the respondent be compelled to sign the Recognition Agreement and a declaration be issued that the industrial action called by the claimant on March 14, 2022 is legal and the threats issued to the claimant's members be declared null and void.
6. At the core of the suit herein is the recognition of the claimant by the respondent as well as industrial relations at the shop floor.
7. For the claimant to enjoy recognition by the respondent, such is regulated under the provisions of Section 54 of the Labour Relations Act, 2007. The claimant must achieve the required threshold to enjoy recognition, and once such is achieved, the claimant will be at liberty to engage in collective bargaining agreement for terms and conditions of employment of its members in the employment of the respondents. Such recognition is distinct and to the point, for the purpose of negotiating collective agreements (CBAs) between the employer and the trade union.
8. With regard to the standing of the claimant to urge the instant case, matters of recognition of a trade union by an employer and the capacity of such trade union to represent its members in court proceedings are regulated under Section 54 of the Labour Relations Act, 2007 and Section 22 of the Employment and Labour Relations Court Act, 2011 respectively.
9. Whereas a trade union seeking to negotiate a CBA must first be recognised by the employer pursuant to Section 54 of the Labour Relations Act, 2007 the same trade can attend court and represent its members and does not require recognition and such right is secured under Section 22 of the Employment and Labour Relations Court Act, 2011 that;

"54. Recognition of trade union by employer

(1) An employer, including an employer in the public sector, shall recognise a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees."

And

"22. Representation before the Court



In any proceedings before the Court or a subordinate Employment and Labour Relations Court, a party to the proceedings may act in person or be represented by an advocate, an office bearer or official of the party's trade union or employers' organisation and, if the party is a juristic person, by a director or an employee specially authorised for that purpose."

10. The claimant having interests in the sector where the respondent is placed and having recruited members in its employment is with proper standing to file and attend before this court.
11. With regard to application of Article 159(2)(c) of the *Constitution*, whereas the *Constitution* allows for alternative disputes resolution mechanisms, where a matter is addressed under a statute with regard to how a right and a remedy on how to secure the same, unless the parties consent to apply other lawful and acceptable methods of dispute resolution, such statutory provisions apply.
12. Where there is a trade dispute, Section 73(2) of the *Labour Relations Act, 2007* allow a party to directly file suit with the court where the issue in dispute relates to the refusal to recognise the trade union.
  - "(2) Notwithstanding the provisions of subsection (1), if a trade dispute—
    - (a) is one in respect of which a party may call a protected strike or lock out, the dispute may only be referred to the Industrial Court by an aggrieved party that has made a demand in respect of an employment matter or the recognition of a trade union which has not been acceded to by the other party to the dispute; or"
13. A reading of Section 73(1) of the *LRA* alone would not reveal the entire content within which, certain exceptional matters can directly be addressed through the court, the question of refusal to recognise a trade union is one such matter. This must be filed directly with the court.
14. With regard to the application of Section 15 of the *Employment and Labour Relations Court Act, 2011* the conciliation of the parties envisaged therein relates to matters that can be directly filed with the court. It would be contrary to justice and Rule of Law for the court to decline jurisdiction and send the claimant away in a claim that the law directs that a question of recognition be addressed by this court. Once parties have filed suit, by mutual consent, they can move the court to have the same referred to a conciliator. See *Teachers Service Commission (TSC) v Kenya Union of Teachers (KNUT) & 3 Others* [2015] eKLR.
15. Section 15(7) of the *Employment and Labour Relations Court Act, 2011* read in context requires that;
  - "7) If at any stage of the proceedings it becomes apparent that the dispute ought to have been referred for conciliation or mediation, the Court may stay the proceedings and refer the dispute for conciliation, mediation or arbitration."
16. With regard to the application of the doctrine of exhaustion, on the finding above on Article 159(2)(c) of the *Constitution*, the provisions of Section 15 of the *Employment and Labour Relations Court Act, 2011* and taking into account the issues in dispute as regulated under the *Labour Relations Act, 2007* the question of recognition of the claimant being at the core of the claim herein, the objections by the respondent are found without merit.
17. Accordingly, objection dated December 5, 2022 are hereby dismissed. No orders to costs.  
Hearing directions shall be issued.



**DELIVERED IN OPEN COURT AT MOMBASA THIS 8TH DAY OF JUNE, 2023.**

**M. MBARŪ**

**JUDGE**

**In the presence of:**

**Court Assistant: Rahma**

**..... and .....**

