



Okello v Sacco Societies Regulatory Authority & another (Employment and Labour Relations Cause E490 of 2023) [2023] KEELRC 1834 (KLR) (31 July 2023) (Ruling)

Neutral citation: [2023] KEELRC 1834 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E490 OF 2023**

BOM MANANI, J

JULY 31, 2023

BETWEEN

OKUNGU ELIEZER OKELLO CLAIMANT

AND

THE SACCO SOCIETIES REGULATORY AUTHORITY 1ST RESPONDENT

CHUNA DT SAVINGS AND CREDIT CO-OPERATIVE

SOCIETY 2ND RESPONDENT

RULING

Background

1. By this action, the Claimant challenges the 1st Respondent's directive to the 2nd Respondent to suspend him from executing his duties at the 2nd Respondent's establishment pending an inquiry into allegations leveled against him. It is the Claimant's case that the 1st Respondent is not his employer. As such, the 1st Respondent has no disciplinary control over him in respect of his contract of service with the 2nd Respondent. Proceeding on this premise, the Claimant contends that the 1st Respondent's aforesaid action is illegal.
2. The record shows that the Claimant was employed by the 2nd Respondent on 20th February 2023 as its Chief Executive Officer (CEO). The 2nd Respondent notified the 1st Respondent of this appointment through its letter of 25th May 2023.
3. On 6th June 2023 the 1st Respondent wrote to the Claimant intimating that whilst serving in various positions in a number of Sacco Societies, he (the Claimant) had engaged in activities that exposed the said Societies to risky business practices. The 1st Respondent asserted that the Claimant's activities contravened the *Sacco Societies Act* and regulations there-under. The 1st Respondent contended that



the Claimant's conduct was perilous to the interests of the members of the affected Sacco Societies and the public.

4. Consequently, the 1st Respondent directed that the Claimant be suspended from executing his functions as CEO of the 2nd Respondent pending conclusion of an inquiry into his conduct. At the same time, the 1st Respondent asked the Claimant to justify why he should continue serving as an officer of a Sacco Society.
5. The record also shows that on the same date, the 1st Respondent wrote to the 2nd Respondent directing the latter to suspend the Claimant from duty pending completion by the 1st Respondent of an inquiry into the Claimant's conduct. The 2nd Respondent was given five (5) days to comply with the aforesaid directive.
6. On 12th June 2023 and in compliance with the directive by the 1st Respondent, the 2nd Respondent wrote to the Claimant asking him to hand over his functions to another employee in acting capacity pending finalization of the aforesaid inquiry by the 1st Respondent. The suspension was to remain in force for the duration that the 1st Respondent had directed.
7. It is these developments that triggered the current action. As intimated earlier, the Claimant contends that the 1st Respondent has no powers to meddle into his contract of employment with the 2nd Respondent. As such, it is the Claimant's position that the decision to suspend him from duty is illegal.
8. On the contrary, the 1st Respondent contends that as a Sacco Societies regulator, it has power to inquire into activities by Sacco Societies in order to prevent exposure of the Sacco members and the general public to harm. In the 1st Respondent's view, this mandate necessarily extends to monitoring the conduct of employees of Sacco Societies to ensure that they do not expose the public to harm. It is the 1st Respondent's contention that this power entitles it to require a Sacco Society to take action against an employee whose conduct the 1st Respondent does not approve of.

The Application Dated 12th July 2023

9. Contemporaneous with the Statement of Claim, the Claimant filed an application dated 19th June 2023. In the application, the Claimant sought for orders to lift the decision by the Respondents to suspend him from duty pending the hearing and determination of his case.
10. The application was placed before the court on 20th June 2023 when it was certified urgent. The court directed the Claimant to serve the Respondents by the close of business on 23rd June 2023. Meanwhile, the matter was rescheduled to 28th June 2023 for mention for further directions. However, the Government declared 28th June 2023 a public holiday with the consequence that nothing transpired in court on that day.
11. The court record shows that the Claimant uploaded an affidavit of service dated 29th June 2023 showing that he served the application dated 19th June 2023 on both Respondents on 24th June 2023. The record also shows that on 30th June 2023, the 2nd Respondent's advocates filed a Notice of Appointment dated 27th June 2023. However, the 1st Respondent's Advocates did not upload their Notice of Appointment of Advocates or indeed any other processes until after 12th July 2023. As a matter of fact, the court's portal shows that the said notice and other documents were paid for on 13th and 17th July 2023.



12. On 29th June 2023, the Employment and Labour Relations Court had an open day. The court did not therefore sit on that day. On 30th June 2023, the record shows that the court's registry relisted the cause for 3rd July 2023.
13. On 3rd July 2023, the Claimant and 2nd Respondent attended court when the Claimant renewed his application for interim orders in terms of the application dated 19th June 2023. The court record shows that the 2nd Respondent acceded to the application. There being no objection by the 2nd Respondent to the Claimant's request and the 1st Respondent having not entered appearance or filed a response to the motion despite having been served as indicated above, the court issued an order lifting the Claimant's suspension from employment.
14. The 1st Respondent has now filed an application dated 12th July 2023 seeking that the orders of 3rd July 2023 (erroneously indicated as having issued on 30th June 2023) be lifted. The 1st Respondent asserts that it was wrong for the court to have issued the impugned orders on a mention date.
15. Whilst it is correct that a court should not ordinarily issue substantive orders on a mention date, this edict only applies to contested matters. Nothing prevents a court from granting a substantive order that has been agreed on by the parties during a mention date.
16. In the case before me, the 2nd Respondent who had appeared in the matter as at 3rd July 2023 acceded to the Claimant's prayer that the impugned suspension be lifted. At this point, the 1st Respondent had neither entered appearance in the cause nor filed a response to the application under reference despite having been served on 24th June 2023 as indicated earlier. It is therefore strange that the 1st Respondent should insinuate that the court was not, in the circumstances, entitled to grant orders sought by the Claimant and acceded to by the 2nd Respondent merely because this was done during a mention date.
17. That said, the affidavit of Elijah Bitange Mageto dated 29th June 2023 shows that on that day (29th June 2023), the Claimant's advocates served the 1st Respondent with a Mention Notice. The 1st Respondent contends and the Claimant does not deny that the Mention Notice served indicated that the cause was scheduled for mention in court on 30th June 2023.
18. According to the 1st Respondent, the said Mention Notice was served on it on 29th June 2023 at 5.28 PM. I have looked at the email extract on record by which the Mention Notice was dispatched and it indeed confirms that the notice was dispatched on 29th June 2023 at 5.28 PM.
19. Under Order 5 rule 22 (c) (2) of the *Civil Procedure Rules*, court processes that are served outside working hours are deemed to have been served on the next working day. Therefore, the contention by the 1st Respondent that the Mention Notice aforesaid is deemed to have been served on 30th June 2023, the day that the Claimant stated that the cause was due for mention before the trial court is correct.
20. The record shows that although the 1st Respondent was served with the court processes in the cause on 24th June 2023, it had not entered appearance in the action as at 29th June 2023 when the Claimant served it with the Mention Notice. The 1st Respondent having not entered appearance in the cause as at 29th June 2023, the Claimant was under no obligation in law to serve it (the 1st Respondent) with the aforesaid Mention Notice.
21. Despite this state of affairs, the Claimant assumed the onerous task of serving this Respondent with the aforesaid Mention Notice. Having assumed this onerous task, the Claimant became obligated to communicate to the 1st Respondent accurate information about the status of the suit.



22. The 1st Respondent avers that the Mention Notice that the Claimant served on 29th June 2023 insinuated that the cause was for mention in court on 30th June 2023. Since the Claimant's Advocates dispatched this notice after working hours on 29th June 2023, it is deemed to have been served on the 1st Respondent 30th June 2023.
23. The 1st Respondent states that its officers saw the notice on the morning of 30th June 2023 shortly before the court's session that was scheduled to commence at 9.00 AM. Therefore, they were unable to adjust their schedules to attend court within the short timeframe that was left. I agree. Such notice would have been grossly inadequate to enable the 1st Respondent to appear in court had the matter been listed for mention as alleged in the Claimant's notice.
24. But this is not the only matter of concern. The court record shows that on 29th June 2023, there was no activity recorded on the court file. It is therefore not possible that it is on this date that the registry listed the cause for mention before court on 30th June 2023. One is therefore left to wonder how and why the Claimant ended up serving the 1st Respondent with a Mention Notice for a nonexistent court date.
25. On 30th June 2019, the court's registry is indicated as having listed the cause for mention on 3rd July 2023. Therefore, if the Claimant had chosen to serve the 1st Respondent with a Mention Notice for 30th June 2023, such notice ought to have specifically indicated that it was for purposes of inviting the 1st Respondent to attend the court's registry to fix a date for the application. Thus, the Mention Notice that the Claimant's counsel served on the 1st Respondent showing that the cause was for mention before the court on 30th June 2023 was clearly erroneous.
26. Understandably, this superfluous and erroneous notice may have contributed to the failure by the 1st Respondent to attend court on 3rd July 2023 when the impugned orders were issued. The superfluous and erroneous notice must have led the 1st Respondent to entertain the thought that the court had handled the matter on 30th June 2023. Having regard to the foregoing, I accept the 1st Respondent's contention that there is a reasonable explanation for its failure to attend court when the impugned orders issued.
27. I have looked at the provisions of the [Sacco Societies Act](#) and the [Sacco Societies \(Deposit-Taking Sacco Business\) Regulations, 2010](#) that are in contention between the parties. Undoubtedly, these instruments confer immense powers on the 1st Respondent to superintend over Sacco Societies.
28. The powers touch on management of individual Sacco Societies' Human Resource portfolio. For instance section 51 (c) of the [Act](#) entitles the 1st Respondent to direct a Sacco Society to suspend or remove its employee from office if the 1st Respondent has reason to believe that the employee is or has been engaged in activities that may injure membership of the Sacco or the public. This position is confirmed by the Court of Appeal in [Silas Kipkemboi v Sacco Societies Regulatory Authority & another](#) [2018] eKLR.
29. Further regulations 67 and 72 of the [Sacco Societies \(Deposit-Taking Sacco Business\) Regulations, 2010](#), appear to give the 1st Respondent very wide powers over the workforce of Sacco Societies. Under regulation 72(6) of the regulations for example, the 1st Respondent has powers to remove from office any officer of a Sacco Society who is suspected to be or have been involved in activities that are perilous to the Sacco (see [Silas Kipkemboi v Sacco Societies Regulatory Authority & another](#)) (*supra*). Having regard to the foregoing, it is inaccurate for the Claimant to contend that the 1st Respondent has no powers to meddle into individual employment contracts between a Sacco Society and its employee.



30. The Claimant has argued that there are no orders that issued on 30th June 2023 as suggested in the application. Therefore and to the extent that the application refers to non-existent orders, it ought to fail.
31. The Claimant contributed to the confusion that the 1st Respondent found itself in when he served the 1st Respondent with a superfluous Mention Notice that relayed erroneous information. As such, I take the view that reference by the 1st Respondent to a wrong date in the application under consideration is due to this mix up.
32. Notwithstanding this mix up, it is clear to the court which orders the 1st Respondent intended to address. In the premises, I decline to dismiss the application on account of this error.

Determination

33. Having regard to the fact that the superfluous Mention Notice issued by the Claimant to the 1st Respondent on 29th June 2023 may have contributed to the 1st Respondent's failure to attend court on 3rd July 2023 to raise its objection to the issuance of the impugned orders and considering that the law appears to entitle the 1st Respondent to intervene in human resource issues of individual Sacco Societies in exercise of its regulatory mandate, I am minded to set aside the orders that this court issued on 3rd July 2023 and allow the 1st Respondent an opportunity to ventilate its objection to the application dated 19th June 2023.
34. I note that the suspension directive against the Claimant did not affect his entitlement to remuneration during the period of the suspension. Further, the 1st Respondent's letter to the 2nd Respondent directing the suspension indicates that the Claimant's suspension is for a period of 90 days from 6th June 2023 to enable completion of the inquiry against him. I doubt that this temporary disruption of the employment relation between the Claimant and 2nd Respondent can occasion grave injustice to the Claimant which cannot be compensated in damages should the Respondents' decision be found to have been without basis.
35. I will not comment on the merits of the application dated 19th June 2023 or the 1st Respondent's Preliminary Objection (PO) to the suit. This will be dealt with when the two applications (the Application of 19th June 2023 and the PO) are heard.
36. The upshot is that the application dated 12th July 2023 is allowed with the consequence that the orders of this court that issued on 3rd July 2023 but which the 1st Respondent erroneously indicates as having issued on 30th June 2023 are hereby set aside.
37. The costs of the application shall abide the outcome of the suit.
38. The parties are at liberty to set down the application of 19th June 2023 and the PO for hearing.

DATED, SIGNED AND DELIVERED ON THE 31ST DAY OF JULY, 2023

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

.....for the 1st Respondent

.....for the 2nd Respondent



ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

