



Kenya Engineering Workers Union v Kenya General Industries Limited (Cause E021 of 2023) [2023] KEELRC 2690 (KLR) (30 October 2023) (Ruling)

Neutral citation: [2023] KEELRC 2690 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E021 OF 2023
M MBARÚ, J
OCTOBER 30, 2023**

BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
KENYA GENERAL INDUSTRIES LIMITED RESPONDENT

RULING

1. The ruling herein relates to two applications dated 2 October 2023 filed by the claimant and application dated 28 August 2023 filed by the respondent.
Both applications were heard together.
2. In the application dated 28 August 2023, the respondent is seeking the following orders;
 - a. The claimants claim be dismissed for being an abuse of the court process.
 - b. Costs of the application and the claim be borne by the claimant.
3. The application is supported by the affidavit of Joseph Karanja Kanyi advocate and on the grounds that the claimant filed this claim on behalf of Fadhili Mohamed, Hussein Ambrose, Morris Mbetsa, Paul Ogwallo, Henry Wamugoya, William Nyongesa Okello, Felix Otieno and Francis Mwai filed the instant claim this year claiming terminal dues against the respondent. the claimant had filed ELRC Cause No.74 of 2022 in respect of the same grievants and which matter is pending determination.
4. In filing the instant claim, the claimant is in abuse of the court process and should be dismissed with costs.
5. In reply, the claimant filed the Replying Affidavit of Wycliffe Nyamwata the general secretary and who aver that in letters dated 2 August 2022, the claimant brought to the attention of the respondent that they wished to amend the Memorandum of Claim dated 22 November 2022 by way of excluding 7



grievants erroneously included in ELRC No. E021 of 2023 yet they are supposed to be in Cause No. E074 of 2022. The 7 grievants were included herein and this was noted during mediation and the correct grievants herein should be;

1. Esau Mwamburi;
 2. Conrad Onyango Wafula;
 3. Salim Bakar;
 4. Francis Wanjohi Mai;
 5. Crispus Nzole Shanga;
 6. Jawa Shinago;
 7. Kasim Bakari; and
 8. Peter Shikuku.
6. The respondent is guilty of material non-disclosure in failing to state that there is ELRC E074 of 2020 and there was mediation and the interests is to create confusion in this matter to avoid paying the grievants terminal dues.
7. The claimant in application dated 2 October 2023 is seeking for orders that;
1. Spent.
 2. The court do issue interim orders staying the hearing of the respondent application dated 28th August 2023 pending the hearing and determination of this application.
 3. In the alternative the court do hereby issue an order that this application be heard together with the respondent's application dated 23rd day of August 2023;
 4. The court do hereby issue an order allowing the claimant 14 days leave to amend her Memorandum of Claim removing names of 7 grievants who are in ELRC Cause No. E074 of 2023 and any pleadings on them leaving this suit with only 8 grievants.
 5. If the court allow orders sought at (4) above, do issue an order the Amended Memorandum of Claim at appendix AWAN 1 is accepted and direct the claimant to pay the requisite fee for the same.
 6. Any other relief the court may deem fit to grant.
 7. Costs be in the cause.
8. This application is supported by the affidavit of Wycliffe Nyamwata and on the grounds that the position of removing the grievants had already been agreed upon during mediation and should not worry the respondent. if this application is allowed, it shall save the respondent and application seeking dismissal of the claims by the 7 grievants and avoid duplication of suits. If the claimant is allowed to withdraw ELRC Cause No. E074 of 2022 the grievants will be prejudiced due to limitation of time.
9. Both parties attended and made oral submissions.



Determination

10. On application dated 28 August 2023 by the respondent, the issue is that the claimant is in abuse of court process by filing this claim including 8 grievants, whereas there is ELRC Cause No. E074 of 2022 with regard to the same grievants. That this claim is filed on behalf of;
 1. Fadhili Mohamed,
 2. Hussein Ambrose,
 3. Morris Mbetsa,
 4. Paul Ogwallo,
 5. Henry Wamugoya,
 6. William Nyongesa Okello,
 7. Felix Otieno and
 8. Francis Mwai.
11. In the earlier claim, these same grievants are parties seeking similar orders for payment of terminal dues.
12. The claimant does not deny it filed ELRC Cause No. E074 of 2022 representing the following grievants;
 1. Fadhili Mohamed,
 2. Hussein Ambrose;
 3. Mouris Mbetsa;
 4. Paul Ogwallo;
 5. Henry Mamugoya,
 6. William Nyongesa Okello, and
 7. Phinius Madiza.
13. Indeed, the claim herein is based on facts that the respondent has refused to pay the grievants their gratuity in violation of the CBA.
14. In reply to the claim, the respondent's case is that the in respect of;
 1. Fadhili Mohamed,
 2. Paul Ogwallo,
 3. Henry Wamukoya and
 4. Morrice Mbeta,
 5. Husein Ambrose and
 6. William Nyongesa
15. These claims are sub judice in light of ELRC Cause No. E074 of 2022 and ELRC No. E0505 of 2021 and that Felix Otieno was employed from March 2018 to July 2020;



16. Francis Mwai was employed from January 2016 to 4 November 2020; and Conrad Onyago was employed from March 2012 to 21 October 2020.
17. In ELRC Cause No.505 of 2021 the claimant, Hussein Issa Ambrose has filed a claim against the respondent on the basis that his employment was terminated on 7 July 2020 and terminal dues were not paid.
18. On the admission that the claimant filed ELRC Cause No. E74 of 2022 for the same grievants as herein save for two, Francis Mwai whose employment terminated on 4 November 2020 and Felix Otieno who is said to have been employed in January 2016 to November 2020, the claims by all other claimant effectively go against the sub judice rule. To file a new claim seeking similar orders under the same name and for the same cause of action, this is in abuse of court process. This leads to duplicity and a multiplicity of suits which ends up in clogging the wheels of justice, holding up resources that would be available to fresh matters, and creating and or adding to the backlog of cases courts have to deal with. Parties would be well advised to avoid a multiplicity of suits as held in *Stanley Koech & another v Charles Gibson Ombasa* [2022] eKLR.
19. The claimant, particularly aware of ELRC Cause No. E074 of 2022 went ahead and file this claim for the 7 grievants well aware that it had already addressed their claims in a different suit.
20. Save for the claims for Francis Mwai and Felix Otieno, the claims by other grievants being sub judice and a duplication of suits, cannot be salvaged through an application seeking an amendment to remove them herein. These claims being in abuse of court process are hereby dismissed. These relates to;
 1. Fadhil Mohamed;
 2. Hussein Ambrose,
 3. Morris Mbeja,
 4. Paul Ogalo,
 5. Henry Wamugoya; and
 6. William Nyongesa.
21. With regard to claims by Francis Mwai and Felix Otieno, employment terminated in November 2020 as pleaded under paragraph (1) of the Memorandum of Claim filed on 20 March 2023. This is a labour relations dispute commenced by the claimant union on behalf of the grievants.
22. The time difference from November 2020 to 20 March 2023 is less than 3 years contemplated under Section 90 of the *Employment Act*, 2007 to file a claim with the court. These claims are properly before the court.
23. For this claim, the claims by Fadhil Mohamed;
 1. Hussein Ambrose,
 2. Morris Mbeja,
 3. Paul Ogalo,
 4. Henry Wamugoya; and
 5. William Nyongesa.

Are hereby dismissed.



24. The claims by;

1. Francis Mwai and
2. Felix Otieno

Are proper and shall proceed on the merits.

25. Application dated 28 August 2023 is allowed and the claimant shall prosecute the claims for Francis Mwai and Felix Otieno on the merits.

26. Application dated 2 October 2023 addressed as above, and the claims found sub judice and abuse of court process is hereby declined. Each party to bear own costs.

DELIVERED IN OPEN COURT AT MOMBASA THIS 30TH DAY OF OCTOBER 2023.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet Muthaine

