



**Dock Workers Union v Sheria & 2 others; Barclays Bank (K) Ltd (Interested Party)  
(Cause 511 of 2018) [2023] KEELRC 2419 (KLR) (5 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2419 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 511 OF 2018  
AK NZEI, J  
OCTOBER 5, 2023**

**BETWEEN**

**DOCK WORKERS UNION ..... CLAIMANT**

**AND**

**MOHAMMED SHERIA ..... 1<sup>ST</sup> RESPONDENT**

**JOSEPH S MAKORO ..... 2<sup>ND</sup> RESPONDENT**

**MATREDA MWAKIRETI ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**BARCLAYS BANK (K) LTD ..... INTERESTED PARTY**

**RULING**

1. Judgment in the suit herein is shown to have been delivered on September 16, 2021 (Ndolo, J). Parties to the suit at the point of delivery of the Court’s said judgment were Dock Workers Union (K) as the Claimant and Mohammed Sheria, Joseph Sialo Makero and Matreda Matilda Mwakireti as the Respondents, and Barclays Bank of Kenya Limited as an Interested Party. A decree is shown to have been subsequently drawn and issued.
2. On February 17, 2022, the Central Organization of Trade Unions [K] (COTU-K) filed a Notice of Motion dated February 17, 2022 wherein it named itself as the 2<sup>nd</sup> Intended Interested Party and Kenya Ports Authority as the 3<sup>rd</sup> Intended Interested Party. The following orders were sought in the said application:-
  - a. that the application be certified as urgent, service upon the respondents be dispensed with, and the same be heard *ex parte* in the first instance.



- b. that the Court be pleased to enjoin the Central Organization of Trade Unions and Kenya Ports Authority to the instant suit as 2<sup>nd</sup> and 3<sup>rd</sup> Intended interested parties, respectively.
  - c. that pending hearing and determination of the application, an order of stay be and is hereby issued staying the decree of this Court.
  - d. that the Court be pleased to set aside or vary the decree issued on December 10, 2021 to the extend of directing the 3<sup>rd</sup> Intended Interested Party to reinstate the deductions of Union dues from the wages of its unionisable employees.
  - e. that costs of the suit be borne by the Respondents.
3. The application sets out on its face the grounds upon which it is founded, as follows:-
- a. the 2<sup>nd</sup> Intended Interested Party has moved *suo moto* and has stopped the deductions and remittances of Union dues to the 2<sup>nd</sup> Intended Interested Party in breach of the [Dock Workers Union \(Deduction of Union dues\) Order 2018](#) as contained in the Kenya Subsidiary Legislation 2018, Legal Notice No. 243, which is a statutory power conferred upon the Minister by section 48 of the [Labour Relations \(Act\)](#), and which order subsists todate.
  - b. that the 2<sup>nd</sup> and 3<sup>rd</sup> Intended Interested Parties were not parties to the suit, and the suit as pleaded was not in the nature of public interest litigation and the orders which were sought, therefore, were not in the character of Rem, but were in the nature of persona, hence the 3<sup>rd</sup> Intended Interested Party was bound by law and the [Constitution](#) to notify the 2<sup>nd</sup> Intended Interested Party that it intended to execute or act on a decision of the Court which had adverse effect on its legal interest.
  - c. that in executing an order and or judgment which had an adverse effect to the legal interest of the 2<sup>nd</sup> Intended Interested Party without notification of the intended action, or the Claimant and/or the Court informing or notifying the 2<sup>nd</sup> Intended Interested Party that such a suit existed, the right of the 2<sup>nd</sup> Intended Interested Party to a fair hearing, administrative action and law of natural justice was contravened, contrary to the provisions of Articles 47 and 50 of the [Constitution](#) and Sections 3 and 4 of the [Fair Administrative Action Act, 2015](#).
  - d. that the Judgment delivered on September 16, 2021 and the decree thereto were never served upon the 2<sup>nd</sup> Intended Interested Party.
  - e. that the review application is therefore brought under the limb that the judgment delivered on 16<sup>th</sup> September 2021 and the decree issued thereto was unlawful and that the application is in pursuit of justice.
4. The application is premised on the supporting affidavit of Francis Atwoli, and 2<sup>nd</sup> Intended Interested Party's Secretary General, sworn on February 17, 2022. The grounds set out in paragraph 2 of this Ruling are substantially replicated in that affidavit.
5. The Claimant filed a replying affidavit on March 4, 2022, while a Notice of Appointment was filed on behalf of the 3<sup>rd</sup> Intended Interested Party on March 7, 2022. The 3<sup>rd</sup> Intended Interested Party further filed grounds of opposition on 5<sup>th</sup> May 2022. On their part, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed a notice of preliminary objection and a replying affidavit on March 31, 2022.
6. When the application was first placed before me under a certificate of urgency on February 18, 2022, I certified the same as urgent and directed that the same be served, and be mentioned in Court on March 7, 2022 for directions. On March 7, 2022, Counsel for the 2<sup>nd</sup> Intended Interested Party/Applicant,



Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and Counsel for the 3<sup>rd</sup> Intended Interested Party appeared before me. I granted 14 days to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and the 3<sup>rd</sup> Intended Interested Party to file responses to the application and fixed the same for further directions on March 22, 2022. On the said date (22/3/2022), I gave the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and the 3<sup>rd</sup> Intended Interested Party seven (7) more days to file their responses to the 2<sup>nd</sup> Intended Party's application, as they had apparently not done so. I also ordered the 2<sup>nd</sup> Intended Interested Party/Applicant to file written submissions on the application within 14 days of being served with responses to the application, with all the other parties filing their written submissions within 14 days of being served with the Applicant's written submissions. Responses to the application were filed as stated in paragraph 5 of this Ruling.

7. The 2<sup>nd</sup> Intended Interested Party/Applicant did not, and has todate never complied with the Court's orders on filing of written submissions, despite several mentions of the case in Court and more time being afforded to it to comply. On 22/2/2023, I fixed the matter for mention on 19/4/2023 for fixing of a Ruling date, and I did fix a Ruling date.
8. As already stated in this Ruling the 2<sup>nd</sup> Intended Interested Party/Applicant never filed written submissions on its application, despite numerous opportunities being granted to its Counsel on record to do so. By refusing and/or failing to file written submissions on its Notice of Motion dated 17/2/2022, the 2<sup>nd</sup> Intended Interested Party/Applicant has deliberately refused to prosecute its said application, and the same is hereby dismissed for want of prosecution.
9. As the suit herein is long finalized, I order that the Court file herein closed.
10. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 5<sup>TH</sup> OCTOBER 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:

..... for Applicant

..... Respondent

