



Munyasya v Kenya National Union of Teachers & another (Employment and Labour Relations Cause E457 of 2023) [2023] KEELRC 3176 (KLR) (30 November 2023) (Ruling)

Neutral citation: [2023] KEELRC 3176 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E457 OF 2023
BOM MANANI, J
NOVEMBER 30, 2023**

BETWEEN

MIKE MUNYASYA CLAIMANT

AND

KENYA NATIONAL UNION OF TEACHERS 1ST RESPONDENT

**MORRIS KINYATTA MALUKI (SUED AS CHAIRMAN MWINGI BRANCH
EXECUTIVE COMMITTEE) 2ND RESPONDENT**

RULING

Background

1. The claimant is the Executive Secretary of the 1st Respondent's Mwingi branch. On 4th May 2023, the branch Executive Council issued him with a letter dated 3rd May 2023 suspending him from office. According to the letter, the suspension was to remain in force until the accusations against the claimant were deliberated on at the branch General Meeting in accordance with the provisions of the 1st Respondent's *Constitution*.
2. On 9th May 2023, the 1st Respondent's Mwingi branch wrote to the claimant informing him of the accusations against him. In addition, the letter informed him of his right to offer his defense at the annual general meeting.
3. Aggrieved by this decision, the claimant filed the current claim. The claimant traces the events that led to his suspension from office to a short text message that was sent to him by the 2nd Respondent on 25th April 2023. According to the claimant, the 2nd Respondent invited him to a meeting at the 1st Respondent's offices in Nairobi but without disclosing the agenda for the meeting.
4. It is the claimant's case that when he got to the meeting venue, he realized that the session that was intended to be for the 1st Respondent's National Executive Council had been converted into a



Mwingi branch meeting. The claimant contends that he was told that the 1st Respondent wanted him suspended from office failing which, the branch was allegedly going to be excluded from its (the 1st Respondent's) activities. The claimant alleges that the branch officials were left with little option but to issue him with the letter of suspension.

5. The claimant argues that the decision to suspend him from office was at the behest of the 1st Respondent. Thus, he contends that it would have been futile for him to challenge the decision before the same 1st Respondent's National Executive Council.
6. The claimant asserts that the process that resulted in his suspension from office was flawed. He contends that the Respondents did not serve him with a notice to show cause before the decision was arrived at.

Preliminary Objection

7. The Respondents have objected to the Court's jurisdiction to hear the case in the first instance. According to them, the 1st Respondent's Constitution provides elaborate dispute resolution mechanisms to address the current dispute.
8. The Respondents contend that if the claimant felt aggrieved by the decision to suspend him from office, he ought to have lodged an appeal against it to the 1st Respondent's National Executive Council instead of filing suit in court. Therefore, this cause has been brought to court prematurely in violation of the principle on exhaustion of alternative remedies.

Analysis

9. Article III (11) of the 1st Respondent's Constitution (as revised in December 2015) provides as follows:-

"Any Union member dissatisfied with the decision of his/her branch can appeal to the National Executive Council within two months. Any member desirous of appealing shall give notice thereof to the branch concerned before forwarding the appeal to the Secretary General who shall place the appeal on the agenda for the National Executive Council meeting. The National Executive Council may suspend the operation of any decision of a branch pending the hearing of such an appeal should application be made to them for that purpose."

10. Article X (C) (5) (L) of the said Constitution provides as follows:-

"The Branch Executive Council may suspend any of its officers for negligence of duty, dishonesty, incompetence or failure to obey its decision or for other reasons it may deem fit and important in the interest of the branch and recommend such suspension to the branch general meeting for a decision to either reinstate or dismiss. However, any officer of the union dismissed by the branch general meeting who is dissatisfied with the decision of his/her dismissal can appeal to the National Executive Council of the union for consideration. The same appeal may be made to the National Executive Council for consideration by the Branch Executive Council if it (Branch Executive Council) is dissatisfied with the reinstatement. In either case, the decision of the National Executive Council shall be final either to uphold or rescind the decision of the Branch General Meeting."



11. The claimant is an official of the 1st Respondent's Mwingi branch. As such, his suspension was pursuant to article X (C) (5) (L) of the 1st Respondent's *Constitution*.
12. The claimant suggests that it is the 1st Respondent's National Executive Council that instigated the decision to suspend him from office. However, the letter of suspension suggests otherwise. From the letter, it is clear that the impugned decision was by the 1st Respondent's Mwingi Branch Executive Council.
13. Further, the minutes of the meeting at which the decision was made clearly demonstrate that the meeting was by the 1st Respondent's Mwingi branch. Therefore, the claimant's contention that his suspension was instigated by the 1st Respondent's National Executive Council is not merited.
14. Under article X (C) (5) (L) of the 1st Respondent's *Constitution*, once the Branch Executive Council suspends an official, it (the Council) recommends its decision to the Branch General Meeting for a decision to either reinstate or dismiss the official. Once the Branch General Meeting pronounces itself on the matter, the parties are free to challenge the decision by way of an appeal to the National Executive Council.
15. The Respondents contend that the claimant ought to have followed this grievance resolution process before approaching the court over the matter. It is the Respondents' position that the court has no jurisdiction to entertain the suit unless and until the matter has gone through the aforesaid process.
16. On the other hand the claimant argues that since the National Executive Council had a say in the decision that was rendered by the Branch Executive Council, it would have been imprudent for him to appeal to the said body since it was already prejudiced. In the claimant's view, submitting to the National Executive Council would have been tantamount to permitting the said body to be a judge in its own cause in contravention of articles 47(1) and 50(1) of the *Constitution of Kenya* 2010.
17. The claimant's argument that the 1st Respondent's National Executive Council is conflicted and incapable of presiding over his appeal is unmerited. As had been pointed out earlier, the impugned decision was issued by the Mwingi Branch Executive Council. Under article X (C) (5) (L) of the 1st Respondent's *Constitution*, such decision can only be challenged through an appeal to the 1st Respondent's National Executive Council after the matter has been considered by the Branch General Meeting.
18. The above provision establishes an internal dispute resolution mechanism which the 1st Respondent's employees and officials are required to invoke in order to resolve emergent disputes. From the provision, it is clear that the body that renders the initial decision is not the one that is entrusted with the power to hear appeals. Whilst the Branch Executive Council renders the initial decision, appeals against the decision are to be handled by the National Executive Council. Therefore, the possibility of bias is minimized.
19. Alluding to the perception of bias, the Court of Appeal in *Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others* [2015] eKLR indicated as follows:-

“We find and hold that the exhaustion doctrine applies even where, as was argued by the appellants herein, what is sought to be challenged is the very authority of the organs before whom the dispute was to be placed. We think there were sufficient safeguards in place for a valid determination of the various plaintiffs' disputes had they filed them within the church set up. And there was always the right, acknowledged by the learned Judge, of approaching the courts after exhaustion of the church mechanisms. By failing to do so, and



quite apart from the force of their apprehensions, the appellants effectively failed to exhaust their remedies and essentially short-circuited the process by filing suits prematurely."

20. Although the claimant has asserted that the impugned decision was at the instance of the National Executive Council, the record shows otherwise. Therefore, the assertion of bias is not supported by cogent evidence.
21. Where a statute or other instrument has established alternative dispute resolution mechanisms, individuals who are covered by the statute or instrument ought to submit disputes between them to the mechanism that is so established before they can approach the court. The court will only permit the parties to bypass the alternative dispute resolution mechanism if it is evident that such mechanism is incapable of providing effective or suitable remedies to them (*Kamba & 8 others v County Public Service Board, Machakos County Government & 2 others* (Employment and Labour Relations Cause E099 of 2023) [2023] KEELRC 2227 (KLR)).
22. In the case before me, it appears that the disciplinary process against the claimant had just commenced when he moved to court to challenge it. The claimant had just been suspended from duty pending his appearance before the 1st Respondent's Mwingi Branch General Meeting to determine his fate. Upon the decision by the Branch General Meeting, the claimant will be entitled to appeal to the 1st Respondent's National Executive Council.
23. The claimant prays for orders to lift his suspension. He also prays that he be reinstated as a signatory to the branch account.
24. There is no suggestion that these reliefs cannot be issued by the 1st Respondent's National Executive Council. Indeed, the mandate of the Branch General Meeting and National Executive Council is, *inter alia*, to hear appeals by the 1st Respondent's officers and employees against any decision by the Branch Executive Council and issue appropriate reliefs. In my view, these include the matters that the claimant has raised in this action.
25. In the premises, I arrive at the conclusion that by approaching this court directly, the claimant has unjustifiably sidestepped the dispute resolution procedures that are provided in the 1st Respondent's Constitution. As a result, the court finds that this suit has been filed prematurely in violation of the doctrine on exhaustion of alternative remedies.
26. As was stated by the Court of Appeal in *Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others* [2015] eKLR, parties to a dispute are bound to exhaust the available dispute resolution procedures unless there are cogent reasons to justify the need to approach the court directly. In addressing the matter, the court stated as follows:-

"It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews within churches, as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside of courts. This accords with article 159 of the Constitution which commands Courts to encourage alternative means of dispute resolution."



Determination

27. I agree with the Respondents’ position that the claimant invoked the court’s jurisdiction prematurely. As a result, I find that the court is currently not seized of the requisite jurisdiction to entertain the action.

28. Consequently, the suit is struck out with costs to the Respondents.

DATED, SIGNED AND DELIVERED ON THE 30TH DAY OF NOVEMBER, 2023

B. O. M. MANANI

JUDGE

In the presence of:

..... for the claimant

..... for the 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

