



Kenya Chomical and Allied Workers Union v East Africa Portland Cement & another; Kitumbo & 141 others (Applicant) (Employment and Labour Relations Cause 2119 of 2014) [2023] KEELRC 2987 (KLR) (17 November 2023) (Ruling)

Neutral citation: [2023] KEELRC 2987 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 2119 OF 2014
AN MWAURE, J
NOVEMBER 17, 2023**

BETWEEN

KENYA CHOMICAL AND ALLIED WORKERS UNION CLAIMANT

AND

EAST AFRICA PORTLAND CEMENT & ANOTHER RESPONDENT

AND

DANIEL LAU KITUMBO & 141 OTHERS APPLICANT

RULING

1. The application dated 25th September 2023 by Messrs Gichuki Kingara seeks the following prayers are as hereunder
 1. That this application be certified urgent and service thereof be dispensed with in the first instance.
 2. That the signature of Jacob Odundo as a signatory in the Joint account opened in the names of Kingara/Lengues/Muema/Odundo in KCB Bank Kenya Ltd account number 1318204860 for purposes of distributing the garnishees decretal amount to the decree holders be dispensed with.
 3. That in the alternative, the Deputy Registrar ELRC Milimani courts do sign the requisite documents and execute the mandate of the aforementioned signatory, Jaco Odundo in his behalf.
2. The next one is by Okatch & Partners advocates dated 2nd November 2023 and prayers are as hereunder:



1. That this application be certified as urgent and service be dispensed with in the first instance and the application be heard ex parte.
 2. That the firm of Okatch & Partners advocates be granted leave to come on record on behalf of the 51 grievants listed in the supporting affidavit of Daniel Lau kitumbo who were purportedly represented by Messrs Gichuki Kingara & co advocates
 3. That pending the hearing and determination of this application, this honourable court be pleased to issue orders directing that the pending decretal amount of the 142 grievants whose names have been listed in the supporting affidavits of Daniel Lau Kitumbo and Wambua Fredrick Katiku to be deposited to the unions bank account for onward transmission to the grievants.
 4. That upon the hearing and determination of this application this honorable court be pleased to issue orders directing that the pending decretal amount of the 142 grievants whose names have bene listed in the supporting affidavits of Daniel Lau Kitumbo and Wambua Fredrick Katiku to be deposited to the Unions bank account for onward transmission to the grievants.
 5. That this honourable court be pleased to award any other orders it may deem just fit and expedient to award in the interest of justice
 6. That the costs of this application be provided for.
3. The third application is also by Okatch & partners advocates dated 26th October 2023 and makes the following prayers :
1. That this application be certified as urgent and service be dispensed with in the first instance and the application be heard ex parte.
 2. That pending the hearing and determination of this application, this honorable court be pleased to issue a temporary stay of its orders/directions issued on the 17th day of October 2023 by honorable lady justice Anna Ngibuini Mwaure that required parties to convene and reach a mutual agreement before it dispenses off with further applications.
 3. That in the alternative to prayer 2 above this honourable court be pleased to issue orders that the firm of Okatch & partners advocates be included in all the meetings convened by the parties in this suit pursuant to the court orders issued on the 17th day of October 2023 pending the hearing and determination of this application.
 4. That in the alternative to prayer 2 and 3 above this honourable court be pleased to issue directions for the immediate hearing and disposal of the application dated the 2nd day of October, 2023 which essentially will safeguard the rights of the applications to be heard, pending the hearing and determination of this application.
 5. That upon the hearing and determination of this application this honorable court be pleased to issue orders directing that the firm of Okatch & Partners advocates be included in all meetings convened by the parties in this suit.
 6. That this honourable court be pleased to award any other orders it may deem just, fit and expedient to award in the interest of justice.
 7. That costs of this application be provided for.
4. There is also application of Jacob Odundo dated 29th September 2023 and prayers as follows:



1. That this applicant be certified urgent, heard ex parte and service hereby be dispensed with in the first instance.
 2. That the honorable court be pleased to issue an order for enjoinder of Jacob Odundo as an interested party.
 3. That the application dated 25th September 2023 by the firm of Gichuki Kingara & Co Advocates and 28th September 2023 by Juliet Chepchumba Tuwot seeking to have the deputy registrar sign on my behalf since they do not want to settle the issue of representation be dismissed since the aforesaid applications are baseless, incompetent, frivolous and misleading.
 4. That the honourable court be pleased to order the deputy registrar to assist parties in handling the issue of the representation before any payment is made to the parties
 5. That this honourable court be pleased to grant any further orders that it might see fit fair and just
 6. That costs of this application be provided for.
5. Having considered all these applications and the honourable court's directions of 17th October 2023 where mention was slated for 14/10/2023 the court ordered a consolidated ruling on 17/11/2023 and states firmly any proceedings herein are now functus officio this court having discharged its purpose and have no further mandate to proceed with the suit.
 6. This honourable court has delivered myriads of rulings. In particular the ruling dated 23rd March 2023 the court gave very clear orders as to how to proceed with this execution going forward.
 7. There was also ruling dated 7th July 2023 which granted garnishee orders as part of the execution process and direction on how to share the decretal sum.
 8. Having labored so hard to attempt to accord justice to these grievants and having brought the matter to its logical conclusion it will be an over kill to start handling further applications of the legal representation or where the decretal moneys will be deposited. It is unfair to expect the court to continue engaging in all these matters which pertain to execution process. This now should proceed to the Deputy Registrar's jurisdiction and to the efforts of the grievants and their counsels.
 9. In the case of *HMI vs KBH* Family Appeal E016 of 2020 the court pronounced itself as follows:

“the functus officio doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality. According to this doctrine a person is vested with adjunctive decision making powers and may as a general rule exercise those powers only once in relation to the same matter. The principle is that once such a decision has been given it is subject to any right of appeal to a superior body or functionary body and is final and conclusive.
 10. In *Telkom Kenya Limited vs John Ochanda (suing on his own behalf and on behalf of 996 former employees of Telkom Kenya Limited)* (2014) eKLR where court stated:

“functus officio is an enduring principle of law that prevents re-opening of a matter before court that rendered the final decision.”



11. In *John Gilbert Ouma vs Kenya Ferry Services Limited* (2021) eKLR the court held:

“it is clear that the doctrine of functus officio does not bar a court from entertaining a case it has already decided but prevents it from revisiting the matter on a merit based re-engagement once final judgment has been entered and a decree issued as in this case”

12. The court is not ready to re-open this case and with over 650 grievants this will never come to an end if it is re-opened. If it parties and their counsels cannot agree how to share out their moneys the court will take one more act for the sake of justice to be seen to be done. The court will call all the grievants in the ceremonial hall to identify themselves. The court will give the grievants three weeks to either agree or look for all the grievants, call them all together for identification with their identification documents. The case will be mentioned on 6th December 2023 and the date of identification will be given on that day if there is no consensus by the parties hopefully before the recess.

In conclusion the court finds all the four applications referred hereto will not be entitled anymore.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 17TH DAY OF NOVEMBER, 2023.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

