



Muraya v Nairobi Water & Sewerage Company Limited (Cause E455 of 2023) [2023] KEELRC 2910 (KLR) (16 November 2023) (Ruling)

Neutral citation: [2023] KEELRC 2910 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E455 OF 2023
L NDOLO, J
NOVEMBER 16, 2023**

BETWEEN

FRANCIS MURAGE MURAYA CLAIMANT

AND

NAIROBI WATER & SEWERAGE COMPANY LIMITED RESPONDENT

RULING

1. On 7th June 2023, the Claimant filed a Statement of Claim alleging unlawful and unfair demotion by the Respondent. At the same time, the Claimant filed a Notice of Motion under Certificate of Urgency seeking stay of the decision to demote him.
2. The Notice of Motion was placed before Nzioki wa Makau J *ex parte* who directed the Claimant to serve the Respondent.
3. In response, the Respondent filed a Notice of Preliminary Objection dated 18th September 2023, challenging the jurisdiction of the Court to hear and determine the application and the claim. The Objection is premised on the following grounds:
 - a. That the Notice of Motion and the Statement of Claim have been filed prematurely and they offend the doctrine of exhaustion;
 - b. That the Claimant ought to have exhausted the remedies provided under the provisions of Clause 26 of the Collective Bargaining Agreement dated 28th July 2022 and the Respondent's Human Resources Policy and Procedures;
 - c. That the entire Notice of Motion and Statement of Claim dated 5th June 2023 are fatally defective, vexatious, frivolous, incompetent, misplaced and an abuse of the court process.
4. The Objection was urged by way of written submissions.



5. In supporting its Preliminary Objection, the Respondent relies on Clause 26 of the Collective Bargaining Agreement which states as follows:

Grievances

Employees are encouraged to invoke Alternative Dispute Resolution in resolving grievances and disputes. All employees of the company have a right to raise a grievance that they may have with their superiors without fear of victimization. An officer who has a matter to raise or who is aggrieved by a decision affecting his/her terms and conditions of employment is entitled to take the following steps;

- a. In the first place he/she may seek an interview with his/her Section Head or immediate supervisor who will endeavour to settle the matter, if necessary in consultation with the Human Resource in charge and the Union sectional representative.
 - b. If he/she is not satisfied, he/she may submit his/her complaint in writing to the Head of Department who will take whatever action he/she thinks appropriate in consultation with Trade Union Official(s) and the DHRAS.
 - c. If he/she is still not satisfied, he/she may report the matter to the appropriate Branch of the Union or such other body as may be authorized to make representations on his/her behalf to the Company.
 - d. If the employee is not satisfied with the outcome at (b) and (c) above, he/she can appeal to the MD directly through the Corporate Appeals.
6. The Respondent further relies on Clause 8.26.2 of its Human Resources Policy and Procedures Manual which provides:

Each employee is expected to consult first with his or her direct supervisor regarding any action, occurrence or attitude expressed or implied by another employee, which is perceived as unfair or inequitable on the job. If a satisfactory resolution cannot be achieved..., the staff member should discuss the matter with the Director of Human Resources and Administrative Services, and in the final instant, with the MD.

7. The Respondent's case is that because the Claimant has not exhausted the internal grievance handling mechanism provided by the Collective Bargaining Agreement and the Human Resources Policy and Procedures Manual, judicial intervention ought to be withheld.
8. The Respondent relies on the decision in *Geoffrey Muthinja Kabiru & 2 others v Samuel Munga Henry & 1756 others* [2015] eKLR where the Court of Appeal 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 fora of last resort and not the first port of call the moment a storm brews...The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is 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 the courts...this accords with article 159 of the Constitution which commands courts to encourage alternative means of dispute resolution.”



9. This was echoed by the High Court in *William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties)* [2020] eKLR as follows:

“The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency’s action, seeks redress from a court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure a party is, first of all, diligent in the protection of his own interest within the mechanisms in place for resolution outside courts...”

10. In this case, there are elaborate avenues for internal resolution of grievances set out in both the Collective Bargaining Agreement and the Human Resource Policies and Procedures Manual, which the Claimant has chosen to sidestep.

11. I find nothing to suggest that the Claimant has been hampered from accessing these internal mechanisms and have therefore reached the conclusion that the claim and the Notice of Motion have been brought before this Court prematurely.

12. Consequently, I decline to assume jurisdiction with the result that the Claimant’s claim and Notice of Motion are disallowed.

13. Each party will bear their own costs.

14. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 16TH DAY OF NOVEMBER, 2023.

LINNET NDOLO

JUDGE

Appearance:

Mr. Omondi h/b for Mr. Ceda for the Claimant

Ms. Akelo h/b for Mr. Otieno for the Respondent

