



**Kenya Union of Domestic, Hotels, Educational Institutions and  
Hospital Workers v BOM Kalulini Boys Secondary School (Cause  
766 of 2019) [2023] KEELRC 2837 (KLR) (9 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2837 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE 766 OF 2019**  
**BOM MANANI, J**  
**NOVEMBER 9, 2023**  
**IN THE MATTER OF RECOGNITION AND NEGOTIATIONS AND JURISDICTION**  
**IN THE MATTER OF FAILURE TO NEGOTIATE A COLLECTIVE**  
**BARGAINING AGREEMENT WITHIN THE MEANING OF THE**  
**LABOUR RELATIONS ACT NO 14 OF 2007 LAWS OF KENYA**

**BETWEEN**

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS  
AND HOSPITAL WORKERS ..... CLAIMANT**

**AND**

**BOM KALULINI BOYS SECONDARY SCHOOL ..... RESPONDENT**

**RULING**

**Background**

1. Through this action, the Claimant seeks to enforce the obligation on the Respondent to negotiate and conclude the collective bargaining process between them. The Claimant asserts that despite all efforts, the Respondent has been reluctant to conclude this process. Thus, the need for an order to compel the Respondent to conclude the exercise.

**Preliminary Objection**

2. The Respondent has filed a preliminary objection regarding validity of the action. The objection is premised on the Notice of Preliminary Objection dated 7<sup>th</sup> February 2023.
3. The gist of the objection is that to date, the Claimant has failed to serve the summons to enter appearance that was taken out in November 2019. That as such, the said summons has since lapsed.



4. Since the Claimant did not apply to have the summons re-issued, the suit has abated. Consequently, the Claimant has no valid claim before the court.
5. In response to the objection, the Claimant filed an affidavit dated 28<sup>th</sup> July 2023. In the affidavit, the Claimant avers that contrary to the submissions by the Respondent's Advocates, the Respondent was served with summons to enter appearance within the timeframe that is set by law.
6. That upon service of summons aforesaid, the Respondent entered into an agreement with the Claimant through which the parties committed to find an amicable settlement of the dispute within set timelines. That however, due to the emergence of the Covid 19 pandemic around the same time, the matter was not pursued to its logical conclusion as initially agreed between the parties.
7. That after the pandemic subsided, the Claimant tried to pursue resolution of the matter. However, the Respondent has shown reluctance to finalize the dispute thus prompting the Claimant to revive the cause through issuance of a mention date in early 2023.
8. Thus, the Claimant denies that summons to enter appearance were not served on the Respondent as alleged. Further, the Claimant denies that it has been disinterested in pursuing the action. In the premises, the Claimant prays that the Respondent's objection be dismissed.

### **Analysis**

9. I have considered the objection. I note that indeed there is a consent filed in the matter on 28<sup>th</sup> February 2020, a couple of months after the summons to enter appearance issued in November 2019. The instrument is signed and bears a receipt stamp of the Respondent.
10. The Respondent has not filed an affidavit to controvert the Claimant's statement on oath to the effect that summons to enter appearance were served on it. Similarly, the Respondent has not denied signing the consent that was placed on the court file on 28<sup>th</sup> February 2020.
11. Having regard to the foregoing, I am convinced that summons to enter appearance were served on the Respondent as claimed by the Claimant. I am unable to rely on bare grounds of objection to disbelieve a statement made on oath by the Claimant's representative to the effect that summons to enter appearance were served on the Respondent. In the premises, the objection premised on this ground fails.
12. The Respondent has also asserted that the suit has been dormant for more than two years since it was filed. Therefore, it qualifies for dismissal for want of prosecution.
13. In reaction to this limb of objection, the Claimant has asserted that it has been listing the action for mention after it presented it to court. Therefore, it is not true that the suit has been dormant.
14. I have looked at the court record and it shows that the matter has been listed for mention a couple of times. In particular, there is a mention date for 8<sup>th</sup> February 2023.
15. The record shows that the above date was taken on 3<sup>rd</sup> January 2023 before the Respondent's counsel came on record and filed the preliminary objection. It is therefore clear to me that the matter had been active immediately before the Respondent's Advocates came on record. Therefore, the contention that the suit had been dormant is without merit. It is rejected.

### **Determination**

16. In the ultimate, the preliminary objection fails for want of merit.



17. Costs of the application are granted to the Claimant.

**DATED, SIGNED AND DELIVERED ON THE 9<sup>TH</sup> 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 12<sup>th</sup> 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**

