



**Kudheiha Workers v Nyali Golf and County Club Limited (Cause E023 of 2022) [2023] KEELRC 2855 (KLR) (9 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2855 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E023 OF 2022  
AK NZEI, J  
NOVEMBER 9, 2023**

**BETWEEN**

**KUDHEIHA WORKERS ..... APPELLANT**

**AND**

**NYALI GOLF AND COUNTY CLUB LIMITED ..... RESPONDENT**

**RULING**

1. When the suit herein was called out for hearing on October 18, 2023, Counsel for the respondent drew the Court’s attention to a notice to act in Person dated March 6, 2023 which the grievant named in the claimant’s statement of claim herein, one Jairus Oloko Munala, had filed. Counsel submitted that as long as that Notice to Act in Person remained on record, Mr. Francis Oyondi, prosecuting the suit on behalf of the claimant Trade Union (KUDHEIHA) had no right of audience. Counsel referred the Court to section 73(3) of the *Labour Relations Act* and further submitted that the said provision did not provide room for an employee like the grievant to either bring suit or to act in person. That it is only an employer’s organization or a Trade Union which can bring suit under the said law and prosecute it.
2. On his part, Mr. Francis Oyondi, appearing on behalf of the Claimant Trade Union, told the court that he would wait the Court’s direction on the issue raised. I fixed the matter for Ruling today.
3. The suit herein is a trade dispute within the meaning of Section 2 of the *Labour Relations Act*, filed by a Trade Union against its Member’s (the grievant’s) employer (the Respondent). The said Section defines a trade dispute as:-

“a dispute or difference, or an apprehended dispute or difference, between employers and employees, between employers and trade unions; or between an employers’ organization and employees or trade unions concerning any employment matter, and includes disputes



regarding the dismissal, suspension or redundancy of employees, allocation of work or the recognition of a trade union.”

4. In view of the foregoing definition, any dispute that involves a trade union and an employer, employers or employers’ organization is a trade dispute. The suit herein, filed by a trade union against an employer, is a trade dispute.
5. Section 73(3) of the *Labour Relations Act* provides:-

“ A trade dispute may only be referred to the Industrial Court by the authorized representative of an employer, group of employers, employers’ organization or trade union.”
6. For avoidance of doubt, the term Industrial Court in the context of section 73(3) of the *Labour Relations Act* refers to the forerunner of this Court, and in the context of the Act refers to the Employment and Labour Relations Court as by law established and constituted.
7. I do agree with Counsel for the Respondent that section 73(3) of the *Labour Relations Act* does not provide room for an employee like the grievant herein to bring a labour dispute. I do add that an employee, regardless of whether or not he is the end beneficiary of the outcome of a trade dispute, cannot purport to take over a trade dispute once filed by his trade union, and purport “to act in person” in the trade dispute. Such a move is an illegality and cannot be allowed by this Court.
8. A strange trend has emerged whereby trade disputes filed by trade unions in this Court are being hijacked by the grievants named therein, who then purport to act in person, and some go to an extent of filing applications to amend the trade union’s pleadings with a view to substituting the trade union’s name with theirs as Claimants. This trend is an illegality and must stop. Such kind of an application had been field in the suit herein and was withdrawn on 23/5/2023.
9. Having said that, I must reach the inevitable conclusion that the grievants notice to act in person dated 6/3/2023 offends section 73(3) of the *Labour Relations Act*, and is therefore an illegality. The same is hereby struck off with no order as to costs.
10. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 9<sup>th</sup> NOVEMBER 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 Claimant

..... Respondent

