



**Kenya Private University Workers Union v Catholic University of Eastern Africa (Employment and Labour Relations Cause E388 of 2023)
[2023] KEELRC 3292 (KLR) (14 December 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3292 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E388 OF 2023
BOM MANANI, J
DECEMBER 14, 2023**

BETWEEN

KENYA PRIVATE UNIVERSITY WORKERS UNION CLAIMANT

AND

CATHOLIC UNIVERSITY OF EASTERN AFRICA RESPONDENT

RULING

Background

1. The Claimant is a registered Trade Union that represents unionizable workers in private universities in Kenya. On the other hand, the Respondent is a private university that is licensed to operate within the Republic of Kenya.
2. The Claimant has filed the instant suit seeking an order deeming the draft Collective Bargaining Agreement (draft CBA) it has forwarded to the Respondent as the Collective Bargaining Agreement between the parties. It is the Claimant's case that despite forwarding the draft CBA to the Respondent for consideration, the latter has failed to act on it.
3. The Claimant contends that the Respondent's inaction on the draft CBA waters down the right to fair labour practice for the Respondents' employees who are members of the Claimant. As such, the Claimant believes that the court should intervene in the matter by deeming its (the Claimant's) draft CBA as the Collective Bargaining Agreement between the parties and order the Respondent to sign it.
4. Accompanying the Memorandum of Claim is the application dated 15th May 2023. In the application, the Claimant seeks the following interim reliefs:-
 - a. That the application be certified as urgent and be heard on priority basis.



- b. That the Respondent be ordered to produce audited accounts for the years 2021 and 2022, the wage bill and the number of unionizable and non-unionizable members of staff.
 - c. That the court prohibits the Respondent from victimizing its employees who are members of the Claimant on account of such membership.
 - d. That the court prohibits the Respondent from coercing the said employees to withdraw their union membership.
 - e. That the court issues any other order that it deems fit to grant.
 - f. That the court condemns the Respondent to meet costs of the application.
5. In response to the application, the Respondent has filed grounds of opposition dated 12th May 2023 and a replying affidavit dated 1st August 2023. The two responses raise several issues for consideration.
 6. The Respondent contends that the instant suit is *sub-judice* as there are several other matters that have been filed by the Claimant over the same issue and which are still pending determination. The Respondent has provided a list of the matters that are pending between the parties.
 7. In addition, the Respondent contends that this suit is an abuse of the court process. It is the Respondent's case that the issue of recognition between the parties is yet to be settled by the court. Therefore, the Claimant cannot insist on the two concluding a Collective Bargaining Agreement between them.

Analysis

8. I have scrutinized the pleadings in the pending cases against the pleadings in the instant case. The issue for determination in the instant case arises from the events of 21st December 2022. On this date, the Claimant contends that it forwarded a draft CBA to the Respondent for consideration and adoption but the Respondent has failed to act on it.
9. It is the Claimant's case that following the Respondent's inaction on the draft, it (the Claimant) wrote a reminder to the Respondent on 9th February 2023 reminding it (the Respondent) to give a counter offer on the draft CBA. The Claimant contends that upon receipt of the reminder, the Respondent wrote to it (the Claimant) on 14th March 2023 disputing existence of a Recognition Agreement between the parties. According to the Claimant, it is this response that triggered its decision to file the instant case.
10. The above set of facts demonstrates that the cause of action in the instant case is premised on the Respondent's refusal to negotiate a Collective Bargaining Agreement between the parties following the Claimant's request in this regard on 21st December 2022. In my view, the events of 21st December 2022 and thereafter cannot be said to be matters that are pending determination in the unresolved suits between the parties as all the suits were filed before 2021. Therefore, the suggestion by the defense that the instant action is sub-judice is without merit.
11. That notwithstanding, I note that the dispute between the parties in the instant case relates to the alleged refusal by the Respondent to conclude negotiations in respect of the proposed Collective Bargaining Agreement between the parties. This contention by the Claimant presupposes that the parties have a binding Recognition Agreement between them. This is because section 54 of the [Labour Relations Act](#) only obligates an employer to negotiate a Collective Bargaining Agreement with a Trade Union if the two have a valid Recognition Agreement.



12. The record shows that although the Claimant believes that it has a binding Recognition Agreement with the Respondent, the Respondent holds a contrary view on the matter. According to the Respondent, the purported Recognition Agreement between the parties was procured through fraud and in contravention of the law. Thus, the Respondent believes that there is no valid Recognition Agreement between them.
13. The issued regarding the validity of the purported Recognition Agreement between the parties is still a live issue in ELRC Cause No 4 of 2019 consolidated with ELRC Cause No 234 of 2019. The matter has also been flagged in ELRC Cause No E581 of 2020. There is no evidence that those cases have been heard and determined.
14. Until the court pronounces itself on the validity of the Recognition Agreement between the parties in the aforesaid pending cases, it is not open to the Claimant to attempt to negotiate a Collective Bargaining Agreement with the Respondent. Such attempt must await determination of the recognition question in the pending suits. This is because the Collective Bargaining process is premised on the presence of a valid Recognition Agreement between the employer and a Trade Union.
15. The attempts by the Claimant to press on with negotiation of a Collective Bargaining Agreement with the Respondent before the question of recognition between the parties has been resolved by the court is contrary to law. Therefore, this suit, in so far as it seeks to compel the Respondent to conclude negotiations in respect of a Collective Bargaining Agreement before the dispute on recognition has been resolved by the court is an abuse of the court process.

Determination

16. Having regard to the foregoing, I find that the instant suit is an abuse of the court process.
17. As a result, it is struck out with costs to the Respondent.

DATED, SIGNED AND DELIVERED ON THE 14TH DAY OF DECEMBER, 2023

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant/Applicant

.....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

JUDGE

