



**Kenya Union of Sugar Plantation & Allied Workers v Kibos Sugar & Allied Industries Limited (Cause 23 of 2020) [2022] KEELRC 1527 (KLR) (11 May 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1527 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE 23 OF 2020**

**S RADIDO, J  
MAY 11, 2022**

**BETWEEN**

**KENYA UNION OF SUGAR PLANTATION & ALLIED  
WORKERS ..... CLAIMANT**

**AND**

**KIBOS SUGAR & ALLIED INDUSTRIES LIMITED ..... RESPONDENT**

**RULING**

1. Before the court is a motion dated November 16, 2021 by the Kenya Union of Sugar Plantation & Allied Workers (the union) seeking orders:
  - i. ...
  - ii. That the court do review the ruling delivered on October 8, 2021 given that the application relied upon introduced new evidence and was not served to the applicant and or heard in this honourable court.
  - iii. That the cost of this application be provided for.
2. The primary ground set out by the union in support of the application was that the court had considered in the impugned ruling an application dated January 14, 2021 by the respondent whilst the application had not been served or directions issued.
3. Kibos Sugar & Allied Industries Ltd (the respondent) filed grounds of opposition to the motion on November 25, 2021. It was therein contended that the application was not only incompetent but an abuse of the court process.
4. The union caused to be filed on March 3, 2022, further replying affidavits in which it was averred that the affidavit in contention was filed outside the 5-days which had been set by the court and that in



- any event, the affidavit did not disclose whether the grievants on whose behalf the cause was filed had been replaced.
5. The second affidavit confirmed that an affidavit of compliance had been served and acknowledged by the union on January 13, 2021.
  6. On February 18, 2022, the respondent filed a replying affidavit wherein it was deposed that the affidavit the court had relied on in making the ruling under attack was filed and served upon the union's named secretary on January 13, 2021, and that the union had exhibited a copy of the affidavit in its submissions filed in court on May 7, 2021.
  7. Pursuant to court directions, the union filed submissions on March 3, 2022 and the respondent on March 4, 2022.
  8. The court has considered the application, affidavits, submissions, and the record.
  9. In the ruling under attack, the court quoted in extenso from an affidavit of compliance sworn by the respondent's Human Resources Manager, one David Moli Odongo.
  10. The affidavit of compliance was filed by the respondent on January 13, 2021. It repeated averments which had been made by the respondent in a replying affidavit sworn on December 17, 2020.
  11. The affidavit of Leah Odera sworn on March 1, 2022 admitted that the affidavit of compliance was served upon it and acknowledged on January 13, 2021 (the union itself had filed with its submissions on May 7, 2021, an advance copy of the affidavit (unsigned)).
  12. The court delivered its ruling on October 8, 2021, some 7 or so months after the union had been served with the affidavit.
  13. When the parties appeared in court on March 2, 2021, the respondent's Human Resources Manager informed the court that the 5 grievants had been replaced.
  14. Therefore, the union's assertion that the affidavit the court considered was not served, introduced new evidence, or that it was not aware of the position by the respondent is a blatant untruth. In any case where a party alleges a court considered or did not consider evidence is not a ground for review. Such a challenge should be made on an appeal.
  15. Having concluded that the affidavit relied on had been served upon the union, the court will examine the effect of the failure by the respondent to file the affidavit within 5-days.
  16. It is not in dispute that the respondent filed the affidavit of compliance outside the 5-days allowed by the court.
  17. In the view of the court, the question whether it considered or failed to consider the affidavit of compliance despite being filed outside the timelines it had prescribed cannot be a ground for the invocation of the review jurisdiction.
  18. From the foregoing, the court finds no merit in the application dated November 16, 2021. It is dismissed with costs to the respondent.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 11<sup>TH</sup> DAY OF MAY 2022.**

**RADIDO STEPHEN**

**JUDGE**



Appearances

For Union Mr. Gombe, National Treasurer

For Respondent Mr. Onsongo instructed by Onsongo & Co. Advocates

Court Assistant Chrispo Aura

