



**Kenya Chemical Workers Union v Beta Healthcare International Limited
(Cause E152 of 2022) [2022] KEELRC 3783 (KLR) (22 July 2022) (Ruling)**

Neutral citation: [2022] KEELRC 3783 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E152 OF 2022**

**J RIKA, J
JULY 22, 2022**

**BETWEEN
KENYA CHEMICAL WORKERS UNION CLAIMANT
AND
BETA HEALTHCARE INTERNATIONAL LIMITED RESPONDENT**

RULING

1. The Respondent filed a Notice of Preliminary Objection dated March 28, 2022, asking the Court to strike out the Statement of Claim and an Application filed under Certificate of Urgency by the Claimant, both dated March 9, 2022.
2. Principally, the Respondent states that the Claimant has not exhausted the conciliation process, having reported the existence of a trade dispute to the Ministry of Labour.
3. The report by the Claimant was made on February 8, 2022. The Conciliator, Grace Mweresa, was appointed on February 28, 2022.
4. It was agreed that the Preliminary Objection is considered on the strength of the Parties' Submissions, which the Parties confirmed filing and exchanging at the last appearance in Court, on June 21, 2022.

The Court Finds: -

5. The Claimant concedes in its Submissions that indeed, it rushed to Court.
6. The Claimant has not exhibited a certificate issued by the Conciliator under Section 69 of the *Labour Relations Act*, 2007, showing that the dispute has not been resolved by conciliation.
7. The Claimant reported the existence of the dispute to the Ministry on February 8, 2022. The Conciliator was appointed on February 28, 2022. Why would the Claimant file the Statement of Claim



dated March 9, 2022, barely a week after the Conciliator was appointed? Has the Conciliator been given the opportunity to address the dispute?

8. In its rush, the Claimant did not comply with Rule 5 of the Employment and Labour Relations Court [Procedure] Rules, 2016.
9. It is noted that the Respondent also reported the existence of a trade dispute to the Ministry of Labour, through a letter dated February 4, 2022, albeit on separate but related issues, as those reported by the Claimant.
10. The Parties must submit to the conciliation process, and not rush to Court. It is in abuse of the process, to have conciliation and litigation processes running parallel, over the same dispute, between the same Parties.
11. The conciliation process must be exhausted, and if any Claim is to be filed before the Court, it be so filed in strict compliance with Rule 5 of the *Employment and Labour Relations Court [Procedure] Rules*, 2016.

It is Ordered: -

- a. The Preliminary Objection is sustained, and the Statement of Claim dated March 9, 2022 is struck out.
- b. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT CHAKA, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 22ND DAY OF JULY 2022.

JAMES RIKA

JUDGE

