



**Kenya Union of Commercial Food and Allied Workers v Text Book Centre Limited  
(Cause E354 of 2022) [2022] KEELRC 3875 (KLR) (25 August 2022) (Ruling)**

Neutral citation: [2022] KEELRC 3875 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E354 OF 2022  
AN MWAURE, J  
AUGUST 25, 2022**

**BETWEEN**  
**KENYA UNION OF COMMERCIAL FOOD AND ALLIED  
WORKERS ..... CLAIMANT**  
**AND**  
**TEXT BOOK CENTRE LIMITED ..... RESPONDENT**

**RULING**

1. The respondent Text Book Centre filed a preliminary objection for orders that the application dated May 25, 2022 be struck off as well as the memorandum of claim also dated May 25, 2021 for the following reasons:-
  - (a) The hon court adopt and uphold the clauses already negotiated and agreed between the parties as placed under paragraph 22 herein.
  - (b) The honourable court adopt the claimant’s proposals as placed herein under paragraphs 23 on the clauses not agreed upon and declare the proposals as fair and reasonable.
  - (c) Upon granting of order (ii) above, the honourable court order the respondent to sign the 2021-2023 collective bargaining agreement within 30 days from the date of judgement.
  - (d) This honourable court grant any other relief as it may deem fit.
  - (e) Cost of the suit be borne by the respondent.
2. The application dated May 28, 2022 was for prayers that the planning and monitoring unit be ordered to analyse the issues and provide an economic report within 45 days upon receipt of the response.



3. The claimant says the parties have a valid agreement and on May 10, 2021 the claimant wrote to the respondent on revision of the CBA and respondent says they could not accommodate additional staff expenses.
4. The parties were not able to agree on several clauses which remain unresolved. The claimant say they continue to suffer and their right to engage in collective bargaining needs to be observed. The claimant prays their prayers be granted.

### **Respondent's submissions**

5. The respondent in their submission avers there is an ongoing conciliation and the conciliator has to give the report. They aver the claimant rushed to court. They rely on the case of Mombasa Employment And Labour Relations Court Cause No 80 OF 2017 *Bakery Confectionary Food Manufacturing & Allied Workers Union (k) v TSS Grain Millers United* [2017]eKLR where the court held that once a party through a trade union has invoked the mechanism under the *Labour Relations Act* that party must exhaust those mechanisms before coming to court.
6. The respondent also submits the Central Planning Monetary Unit is not a party to this suit and so orders should not be issued against a party who is not a party in the suit. The respondent submits that the parties are currently engaged in conciliation and so the suit is premature and should be dismissed with costs.

### **Claimants submissions**

7. The claimant submits they reported a dispute to the Cabinet Secretary Ministry of Labour on June 25, 2021 and last meeting of conciliation was on February 9, 2022. The report was to be issued by latest March 9, 2022.
8. The claimant says todate the report has not been issued that is about 5 months. The claimant says section 67(1a) of *Labour Relation Act 2007* provides that conciliator or conciliation committee appointed under s. 66 shall attempt to resolve a trade dispute within 30 days of appointment. Section 69(b) of *Labour Relations Act* provides that a trade dispute is deemed to be unresolved thirty days from the date of appointment or as would be agreed by the parties.
9. The claimant says the conciliator has failed to issue the report and hence the dispute which is an economic dispute has stagnated. The claimant states that a right to engage in a suit under article 41 of the *Constitution* of Kenya cannot be taken away by a conciliator who fails to issue a certificate of unresolved dispute.
10. Also the Central Planning unit can be ordered by the court to issue an economic report. This is as provided in section 37(1) of the *Employment and Labour Relations* (procedure rules 2016). He says that for CPMU to analyse an economic dispute does not necessitates the said CPMU to be a party to a suit. The CPMU is there to assist in economic disputes. The claimant therefore prays the preliminary objection raised by the respondent be dismissed with costs.
11. He prays the notice of motion to be allowed and CPMU ordered to file an economic report 45 days from the date of ruling.

### **Decision**

12. The court has considered the application by the claimant and the prayers by the respondent vide a preliminary objection to find that the court lacks jurisdiction to determine both the application and the suit dated May 25, 2022 respectively.



13. The claimant referred trade dispute to the Cabinet Secretary Ministry of Labour and Social Protection on June 25, 2021 after the respective parties had attempted to resolve the same via written communication and physical meetings but to no avail.
14. On September 8, 2021 the conciliator invited the parties to a meeting on September 21, 2021. The respondent forwarded their proposal to the conciliator on September 22, 2021 and the parties met on September 29, 2021. The respondent was to consult his board concerning the clauses that the claimant sought for revision but he reported that his position had not changed.
15. The parties met again on February 9, 2022 and on February 16, 2022 and on February 23, 2022 the claimant and respondent wrote to the conciliator to issue the conciliation report.
16. The conciliator never issued the report even after follow-up by the respective parties.
17. Section 67 of *Labour Relations Act* provides that a dispute is deemed unresolved after conciliation if:
  - a. Conciliator issues a certificate that the dispute has not been resolved by conciliation or;
  - b. Thirty day period from appointment of conciliator or any longer period as agreed by the parties expire.
18. Section 5(3) of the *Employment and Labour Relations Court (Procedure) Rules 2016* provide that if conciliation takes place and conciliator fails to issue a certificate the claim shall be accompanied by an affidavit sworn by the claimant or their representative attesting to the reason why the conciliator has not issued a certificate. In this case Mike O Oranga the claimant's Organizing Secretary deponed on May 25, 2022 and explained the failure by the conciliator to issue a certificate of conciliation. Hence a memorandum of claim dated May 25, 2022 was also filed.
19. In view of the foregoing the court finds the respondent's preliminary objection application dated June 10, 2022 is not merited as the claimant/applicant is entitled to his right to be heard as well provided in the *constitution* of Kenya 2010 and especially article 41 which provides that every person has the right to fair labour practices.
20. In view of the foregoing the said preliminary objection dated June 10, 2022 is dismissed with costs to the claimant and the authorities cited by the respondent especially Court of Appeal No 10 of 2015 *Geoffrey Muthinja & Another v Samuel Muguna Henry & 1756 Others* 2015 where the court provided that it is important for parties to first exhaust the dispute resolution mechanism before approaching court are not relevant to this matter. The court is convinced the claimant attempted all ways to resolve the dispute using alternative dispute mechanism and was now forced to go the way of court. The court therefore dismisses the preliminary objection filed by the respondent with orders as to costs awarded to the claimant/applicant.
21. As relates to notice of motion dated May 25, 2022 the court finds the parties have canvassed the same via their submission and the court must make orders to meet the ends of justice to all the parties. Guided by section 37 of *Employment and Labour Relations (Procedure) Rules 2016* which Provides:

“In any economic dispute involving a collective agreement or any other issue where the court considers fit the court may order the Central Planning and Monitoring Unit to file a report within 30 days of service of the pleadings in any suit or such other time as the court considers necessary. The court finds the CPMU can be ordered by the court to provide the required report.”



22. Unlike the authorities cited by the respondent where a third party was not involved in a suit and so orders could not be made against them, in the case of CPMU the court can on suo moto or otherwise order CPMU to file an economic report in order to determine a trade dispute. There is no illegality in this case for the court to order the CPMU to provide the said report.
23. In conclusion and having dismissed the respondents preliminary objection dated June 10, 2022 the court also is inclined and hereby allows the prayers in the claimant/applicant notice of motion dated May 25, 2022 and so orders the CPMU to provide an economic report herein within 45 days from today's date and the said CPMU to be served with the order by the court to so provide that report.

Costs of the notice of motion in the cause. Costs of the preliminary objection to be awarded to the claimant/applicant. Mention on October 31, 2022 to receive the CPMU's report and give further directions.

Orders accordingly.

**DELIVERED, DATED AND SIGNED IN NAIROBI THIS 25<sup>TH</sup> AUGUST, 2022**

**ANNA NGIBUINI MWAURE**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**ANNA NGIBUINI MWAURE**

**JUDGE**

