



Kenya Engineering Workers Union v R.M. Patel & Partners (Cause E018 of 2021) [2022] KEELRC 4035 (KLR) (23 September 2022) (Judgment)

Neutral citation: [2022] KEELRC 4035 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E018 OF 2021
NJ ABUODHA, J
SEPTEMBER 23, 2022
FORMERLY NAIROBI CAUSE E491 OF 2020**

BETWEEN

KENYA ENGINEERING WORKERS UNION CLAIMANT

AND

R.M. PATEL & PARTNERS RESPONDENT

JUDGMENT

1. On January 25, 2022, this Court directed that considering the nature of the prayers sought in the application and memorandum of claim were similar. That is to say the issue being arrears of salary and implementation of the CBA for 2017/2019, the matter be canvassed by written submissions without calling evidence.
2. The claimant in its written submissions stated inter-alia that the respondent had not implemented any salary and house allowance increment as no evidence had been filed in court such as payroll before the registration of the CBA and or after the registration of the same yet they were the custodian of employment records.
3. According to the claimant, the dispute was around the refusal by the respondent to implement the parties two CBA's that were borne out of the consent order by the parties in ELRC No. 13 of 2019. The CBA's were signed on May 14, 2019 and registered on February 7, 2020 under reference number CA No 308 of 2019 and 316 of 2019.
4. According to the claimant union, the parties agreed on general wage increments of 35% being spread over four years. The union further submitted that the salaries used in the tabulation by the respondent were much lower than what was in the CBA by the parties and that the alleged payment of salary arrears through the claimants was not true as copies of receipts and cheques attached to the memorandum



- of response were claimants and COTU union dues as employee's salaries were never paid through the union but to employees directly.
5. Concerning the jurisdiction of the Court to entertain the matter, the claimant submitted that under section 62 of the *Labour Relations Act* it was not mandatory to refer the matter for conciliation before filing the same before the Court. In that respect, the claimant relied on the case of *Kenya Hotels and Allied Workers Union -v- Karen Blixen Camp Ltd* Cause No. 647 of 2011 per Rika J.
 6. The respondent on its part submitted that the claimant did not refer the dispute herein to the Minister before filing the same although the Court was vested with jurisdiction to hear and determine the dispute. According to Mr. Mathai, section 73 of the *Labour Relations Act* was clear that the Court is seized of the matter if the dispute is not resolved after conciliation. Failure to refer the matter to the Minister for conciliation rendered the suit premature and totally defective hence the same should be struck out.
 7. Counsel further submitted that the persons whom the Union intends to enforce their payments are not persons who are members of the claimant and hence not covered under the CBA's between the claimant and the respondent. The claimant had not provided any check-off forums in respect of the members who they alleged the respondent had not complied with the terms of the CBA.
 8. From the foregoing, it would seem that there is no dispute that there exists a registered CBA between the parties. There is further no dispute that the parties herein recorded a consent in ELRC No. 13 of 2019 giving rise to the signing of the CBA's on May 14, 2019 and registration on February 7, 2020.
 9. The dispute seems to be over the implementation of the terms of the CBA. The respondent on its part contended that they had duly complied with the CBAs and that the persons on whose behalf the claimant seek to be paid as per the CBA are not covered by the same.
 10. The parties are further contesting whether this matter should have first been reported to the Minister for conciliation before filing the suit.
 11. The Court of Appeal in the case of *Karen Blixen Camp Limited -v- Kenya Hotels and Allied Workers Union* Civil Appeal No. 100 of 2013 has held that referral under section 62 of the *Labour Relations Act* is not mandatory. A party is at liberty to file a suit or have the matter referred for conciliation under section 62. The Court of Appeal however observed that this Court has the discretion to refer the parties for conciliation before becoming fully seized of the matter.
 12. The matter before me does not present a serious dispute. It seems to be a question of comparing and reconciling the list of people the claimant union is claiming have not benefitted from the CBA's and further to compare the payroll prior to the signing of the CBA's and after the signing in order to establish whether there has been implementation or not.
 13. In the circumstances the Court hereby refers the parties to the Uasin Gishu Labour officer to reconcile the issues set out above and file a report before this Court within 60 days of this judgment for recording of final orders.
 14. The matter is set for mention on November 28, 2022 for recording of final orders.
 15. It is so ordered

DATED AND DELIVERED AT ELDORET THIS 23RD DAY OF SEPTEMBER, 2022

ABUODHA NELSON JORUM

JUDGE ELRC

