



**Kenya Chemical Workers Union v Silaafrica Limited (Cause E074 of 2021)
[2022] KEELRC 13337 (KLR) (30 November 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13337 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E074 OF 2021
J RIKA, J
NOVEMBER 30, 2022**

BETWEEN

KENYA CHEMICAL WORKERS UNION CLAIMANT

AND

SILAAFRICA LIMITED RESPONDENT

RULING

1. The claimant filed an application way back on January 1, 2021. The application is dated December 10, 2020 which predates the filing of the claim.
2. The orders sought are inimical to the expeditious disposal of the main claim. Having filed the claim at the beginning of 2021, the claimant ought to have focused on prosecuting the main claim, but has instead pursued the application dated December 10, 2020, for almost 2 years today.
3. The claim is brought on behalf of the respondent's member [grievant], James Kirubi Mwangi. Mwangi complains that he was employed by the respondent on February 2, 2002, as a machine attendant, and that his contract was terminated by the respondent on November 16, 2018. He was alleged to have engaged in an illegal strike. He feels that termination was unfair, warranting an order of reinstatement or compensation.
4. The application dated December 10, 2020, seeks orders that: the claim is heard and disposed of within 30 days; pending hearing of the application, the court declares that the respondent contravened section 41, 43 and 45 of the *Employment Act*, and the grievant is reinstated without loss of benefits and allowances; pending hearing and determination of the application, the court finds that the respondent did not consult the claimant contrary to clause 18 of the CBA; pending hearing and determination of the application, the respondent is compelled to pay the grievant salaries and wages for the time he has been out of employment; and that if the court finds reinstatement untenable, it grants the claimant all his benefits as per CBA, and maximum compensation.



5. The respondent relies on Grounds of Opposition dated June 2, 2021. Its position is that the application seeks the same orders sought in the Statement of Claim. The respondent would be denied its right to a fair hearing enshrined in the Constitution. The application is an abuse of the process of the Court.
6. Parties confirmed to have filed and exchanged submissions on the application at the last mention on September 29, 2022.

The court finds: -

7. The application is not in the interest of the grievant. The trade union which represents him, knows substantive orders sought, are not granted, “ pending hearing and determination of this application,” as pleaded, or even upon hearing of the application *inter partes*.
8. Reinstatement and compensation are prayers to be considered upon hearing of the claim. The claimant is wasting time, and subverting the claim, especially the possibility of granting the order of reinstatement, by filing and prosecuting an unnecessary application. It has taken 2 years to prosecute the application, while the order of reinstatement can only be granted 3 years from the date of termination. Why file an application which cannot be granted, instead of prosecuting the claim? Why does the claimant seek an order that, “ the matter be disposed of within 30 days,” knowing well this is not contemplated by the Employment and Labour Relations Court [Procedure] Rules, 2016, which regulate proceedings before this court? When shall the court hear the matter within 30 days, while the claimant has filed an unnecessary application, which must be heard before the claim is processed for hearing? There are litigants who filed claims before this court at the same time with the claimant, focused of prosecuting those claims, and today are enjoying the fruits of their litigation.
9. The court got the impression that the claimant grossly misled the grievant, in presenting this application, and has occasioned delay in prosecution of the claim unnecessarily. Grant of the prayers sought would injure the respondent’s constitutional right to a fair hearing, and militate against the procedures relating to filing and hearing of claims, prescribed under the Court’s Procedure Rules.

It is ordered: -

- a. The application dated December 10, 2020 filed by the claimant is declined.
- b. Costs to the respondent.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 30TH DAY OF NOVEMBER 2022.

JAMES RIKA

JUDGE

