



Public Transport Workers Union v Apollo Tours & Travel Limited; Public Transport Operators Union & another (Interested Parties) (Employment and Labour Relations Cause E882 of 2021) [2022] KEELRC 13509 (KLR) (9 December 2022) (Ruling)

Neutral citation: [2022] KEELRC 13509 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E882 OF 2021
SC RUTTO, J
DECEMBER 9, 2022**

BETWEEN

PUBLIC TRANSPORT WORKERS UNION CLAIMANT

AND

APOLLO TOURS & TRAVEL LIMITED RESPONDENT

AND

PUBLIC TRANSPORT OPERATORS UNION INTERESTED PARTY

UNIONISABLE EMPLOYEES OF APOLLO TOURS AND

TRAVEL INTERESTED PARTY

RULING

1. The claimant filed a Statement of Claim on October 27, 2021 seeking the following reliefs:
 - a. That a permanent injunction be and is hereby issued restraining/and or prohibiting the Respondent from making wrongful, unauthorized and illegal deductions from the salaries of the Applicant members and or any other member of the applicant union.
 - b. That the Respondent be and is hereby directed to continue deducting Trade Union dues from the applicant members in strict accordance to the Form S, and to ensure the prompt remittance of same to the Applicant union in accordance to the law.
 - c. That the costs of the matter be provided for.
2. The Claim was accompanied by an Application brought under a certificate of urgency seeking interim orders pending the hearing and determination of the suit.



3. Upon being served with the Statement of Claim and Application, the Respondent, filed a Notice of Preliminary Objection dated March 31, 2022 which is premised on the following grounds:
 - a. That the claimant's suit is sub judice because there is a similar cause of action between the same parties in Nairobi ELRC No E694 of 2020: Transport Works Union Vs Apollo Tours & Travel & Public Transport Workers Union.
 - b. That the aforesaid suit was referred to conciliation by Hon. Justice Nduma Nderi and an implementation of the said Court order, the Conciliator issued his finding and recommendation report dated June 23, 2021.
 - c. That the said recommendation report has not been challenged or reviewed by any party herein and what remains is its adoption in Court and its implementation.
 - d. That this suit is frivolous, vexatious, devoid of merit, brought in bad faith and should be dismissed with costs.
4. The claimant responded to the Preliminary Objection and disputed the Respondent's assertions that the suit is sub judice and stated that the same is not similar to ELRC Cause No E694 of 2020. That the dispute in ELRC Cause No E694 of 2020 is for revocation of a recognition agreement as the 1st Interested Party's membership was at 45.5% hence it lacked the requisite majority.
5. The 2nd Interested Party was enjoined in the suit on July 25, 2022.

Submissions

6. On July 25, 2022, it was agreed by all parties that the preliminary objection be canvassed by way of written submissions.
7. On its part, the Respondent submitted that jurisdiction is what gives a Court or a tribunal the power, authority and legitimacy to entertain any matter before it. That since there is a pending matter before another Court of equal and competent jurisdiction on the same issues and parties, this Court has no jurisdiction to take one step in the instant proceedings. That the doctrine of sub judice prevents the Court from proceeding with the trial of any suit in which the matter in issue is directly and substantially with the previously instituted suit between the same parties pending before same or another Court with jurisdiction to determine it. To this end, the Respondent urged the Court to dismiss the suit with costs.
8. On the other hand, the Claimant submitted that the suit in ELRC Cause No E694 of 2020 is not similar to the instant one. That the said suit which is by the 1st Interested Party seeks orders to stop the Respondent (Apollo Tours) from revoking a recognition agreement between them for purposes of recognizing it. That in the instant suit, the Claimant is seeking remittance of union dues deducted from its members. It added that it is entitled to claim the said union dues.
9. The 2nd Interested Party submitted that the instant suit and the one in ELRC Cause No E694 of 2020 are distinct from each other and the matter in issue is neither directly nor substantially the same as that suit. That the parties in those proceedings are not the same and neither are they litigating under the same title.
10. Subsequently, the Claimant and the Interested Party asked the court to dismiss the Preliminary Objection with costs.



Analysis and determination

11. I have considered the Preliminary Objection and the submissions by all parties and the singular issue for determination is whether the instant matter is sub judice.

12. The doctrine of sub judice is provided for under Section 6 of the [Civil Procedure Act](#) in the following manner:

' No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.

Explanation - The pendency of a suit in a foreign court shall not preclude a court from trying a suit in which the same matters or any of them are in issue in such suit in such foreign court'.

13. Essentially, the doctrine of sub judice bars a court from proceeding with the trial of any suit in which the matter in issue is directly and substantially the same with the previously instituted suit between the same parties pending before same or another court with jurisdiction to determine it. It aims at preventing courts of concurrent jurisdiction from simultaneously hearing different matters where the issues are the same in substance and where a similar relief is sought.

14. In regards to the issue, the Supreme Court had this to say in [Kenya National Commission on Human Rights vs Attorney General; Independent Electoral & Boundaries Commission & 16 others \(Interested Parties \[2020\] eKLR\)](#) thus:

' The term 'sub-judice' is defined in Black's Law Dictionary 9th Edition as: 'Before the Court or Judge for determination.' The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.

15. In [Kenya Bankers Association vs Kenya Revenue Authority \[2019\] eKLR](#), Mativo J (as he then was) restated the principles applicable in sub judice in the following manner:

' 34. For the doctrine of sub judice to apply the following principles ought to be present:- (a) There must exist two or more suits filed consecutively; (b) The matter in issue in the suits or proceedings must be directly and substantially the same, the parties in the suits or proceedings must be the same or must be parties under whom they or any of them claim and they must be litigating under the same title, the suits must be pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.'



16. I have had the occasion to consider the Memorandum of Claim and pleadings in ELRC Cause No E694 of 2020 and note that save for the 2nd Interested Party, the other parties are the same as in the instant suit. Further to that, the Respondent is Apollo Tours and Travel Ltd, in both cases.
17. The issues identified to be in dispute in ELRC Cause No E694 of 2020, are: illegal encroachment of union membership; deduction and remittance of union dues and revocation of a recognition agreement. The reliefs sought are as follows:
 - a. A declaration that the Claimant union and not the 2nd Respondent is the rightful union in the sector of Tours and Travel business pursuant to section 14(e) and 54(2) of the [Labour Relations Act](#) 2007.
 - b. An order directing that the union dues for October 2020 and each succeeding month be deducted by the 1st Respondent and be remitted to the Claimant as provided for by the provisions of section 48 and 50 of the [Labour Relations Act](#), 2007.
 - c. A mandatory injunction do issue restraining the 2nd Respondent whether by itself, agents or whosoever is acting on its behalf from further encroaching on the Claimants members and or interfering with the deduction and remittance of union dues from the 1st Respondent from their unionisable employees, who are the members of the Claimant union.
 - d. That the 1st Respondent be restrained from terminating the parties Recognition Agreement with the claimant or entering into another Agreement detrimental to the Claimant and its members.
 - e. Costs of the suit.
18. As stated herein, the issues in dispute are in regards to deduction and remittance of trade union dues from the Claimant's members to the Claimant. As can be seen from ELRC Cause No E694 of 2020, it is evident that the reliefs in respect of deductions and remittance of trade union dues, has been sought. It is therefore not true that the issue in dispute in ELRC 694 of 2020 is only in respect of a recognition agreement.
19. It is therefore discernible that from the prayers sought in the instance case, the issues relate to the same subject matter as in ELRC Cause No E694 of 2020. The only difference with the instant claim is that it is the Claimant seeking the grant of orders while in ELRC Cause No E694 of 2020, it is the 1st Interested Party seeking orders.
20. In my view, the issues raised by the Claimant in the instant suit can very well be raised and resolved in ELRC Cause No E694 of 2020. Indeed, it is notable that the issues raised in the said suit are more comprehensive as they touch on encroachment of union membership and revocation of the 1st Interested Party's recognition agreement. A resolution of that issue will very well resolve the issue of union dues.
21. In light of the foregoing, the instant suit fits the bill of sub judice as the parties in both suits are the same, with the issues being directly and substantially the same. In addition, the suits are pending before another Judge of the Employment and Labour Relations Court, hence is properly seized with jurisdiction to grant the reliefs claimed.
22. In the circumstances, I therefore find and hold that this suit is sub judice.
23. Having determined that this suit is sub judice, the Respondent's Preliminary Objection dated March 31, 2022 is upheld.



24. Accordingly, the suit dismissed with no orders as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 9th day of December, 2022.

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STELLA RUTTO

JUDGE

Appearance:

Mr. Odunga for the Claimant

Mr. Mwangi for the Respondent

Mr. Ndege for the 1st Interested Party

Ms. Achieng for the 2nd Interested Party

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 15th March 2020 and subsequent directions of 21st 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.

STELLA RUTTO

JUDGE

