



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Kenya Building, Construction, Timber & Furniture Industries Employees
Union v Sinohydro Tiajin Engineering Company Limited (Cause
1713 of 2016) [2018] KEELRC 1541 (KLR) (13 July 2018) (Judgment)**

*Kenya Building, Construction, Timber & Furniture Industries
Employees Union v Sinohydro Tiajin Engineering Co. Ltd [2018] eKLR*

Neutral citation: [2018] KEELRC 1541 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE 1713 OF 2016

S RADIDO, J

JULY 13, 2018

BETWEEN

**KENYA BUILDING, CONSTRUCTION, TIMBER & FURNITURE
INDUSTRIES EMPLOYEES UNION CLAIMANT**

AND

SINOHYDRO TIAJIN ENGINEERING COMPANY LIMITED RESPONDENT

JUDGMENT

1. The Kenya Building, Construction, Timber & Furniture Industries Employees Union (Union) commenced legal proceedings against Sinohydro Tianjin Engineering Co. Ltd (Respondent) on 25 August 2016 and the issue in dispute was stated as Refusal to recognise the Union.
2. On 8 September 2016, the firm of Ogola Okello & Co. Advocates filed a Notice of Appointment of Advocates on behalf of the Respondent.
3. The Respondent did not file a Response to the Memorandum of Claim within the prescribed time and on 17 October 2016, the Court in the presence of its advocate directed it to file a Response within 14 days.
4. The Response was not filed.
5. On 24 July 2017, the Union fixed the Cause for hearing on 21 May 2018.
6. When the Cause came up for hearing on the scheduled date, the Respondent and its advocate were not in Court.



7. Mr. Nyabena holding brief for Ms. Chege for the Union proposed that the Cause be determined on the basis of the record and submissions to be filed.
8. The Court directed, and the Union filed its submissions on 8 June 2018.
9. The Union reported a trade dispute to the Cabinet Secretary, Labour on 23 June 2016 and the dispute was stated as refusal to recognise the Union.
10. It appears that a Conciliator was appointed.
11. In terms of Part VIII of the *Labour Relations Act*, the parties should have gone through conciliation and if the dispute was unresolved, the Conciliator should have issued a certificate in terms of section 69 of the Act to enable the Union move to Court.
12. It is apparent that by the time the Union was moving Court on 25 August 2016, the conciliation process had not ended either through a resolution or in a stalemate for according to a certificate filed by the Union in its submissions, the Conciliator issued a certificate only on 26 January 2017.
13. That the Union moved the Court prematurely is therefore obvious.
14. There are reasons why the law provides for conciliation in disputes such as this one and the partners should not lightly short circuit that conciliation process.
15. In the view of the Court, the prematurity should lead to the striking out of the Cause.
16. However, the Union also contended that the Respondent had harassed and intimidated employees who had joined it for exercising their right to join and participate in the activities of a Union.
17. This part of the dispute required evidence, and because the Union did not lead any evidence orally or through affidavits, the Court finds no merit on that aspect of the dispute.

Conclusion and Orders

18. In light of the above, the Court has no hesitation in declining to entertain the dispute presented and orders that the Memorandum of Claim herein be struck out with no order as to costs.

DELIVERED, DATED AND SIGNED IN NAIROBI ON THIS 13TH DAY OF JULY 2018.

RADIDO STEPHEN

JUDGE

Appearances

For Union Ms. Chege

For Respondent Ogola Okello & Advocates

Court Assistant Lindsey

