



Kenya Union of Sugar Plantation & Allied Workers v Kibos Sugar & Allied Industries Limited (Cause 23 of 2020) [2024] KEELRC 1030 (KLR) (8 May 2024) (Ruling)

Neutral citation: [2024] KEELRC 1030 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 23 OF 2020**

**S RADIDO, J
MAY 8, 2024**

BETWEEN

KENYA UNION OF SUGAR PLANTATION & ALLIED WORKERS CLAIMANT

AND

KIBOS SUGAR & ALLIED INDUSTRIES LIMITED RESPONDENT

RULING

1. In a judgment delivered on 24 May 2023, the Court ordered the Respondent to compute the Grievants half-salaries withheld during the period they were on suspension.
2. The Respondent took the view that the Grievants were on suspension from 20 February 2020 to 29 February 2020, when the Court issued orders lifting the suspensions and directing them to report back to work, and computed the half-salaries for the 9 days.
3. The Grievants then debriefed the Union and instructed the firm of Peter Warindu & Co. Advocates to act for them. The firm wrote to the Court seeking an interpretation of the judgment on the computations and the Court directed on 14 December 2023, that a formal application be filed.
4. Soon thereafter, the Grievants also debriefed the firm of advocates by filing a Notice to Act in Person on 24 January 2024.
5. The Grievants then filed a Motion dated 15 February 2024 seeking orders:
 1. ...
 2. That the Court be pleased to adopt the computation filed by the Claimant herein.
 3. That in alternative to order (2) above, this Court be pleased to compute half salary that the Grievants are entitled to during suspension.



4. That costs of this application be provided for.
6. The main grounds advanced by the Grievants in support of the Motion were that despite the orders by the Court, the parties had not agreed on the computations and hence payment had not been made. On why no agreement had been reached on the computations, the Grievants asserted that they had been on suspension from 20 February 2020 up to 24 May 2023, when the Court's judgment was delivered, while the Respondent maintained that they were on suspension for only 9 days up to or around 29 February 2020.
7. The Respondent filed Grounds of Opposition on 8 March 2024 contending that the Court was *functus officio* and that the Motion was *res judicata* and an abuse of the Court process because of previous determinations.
8. The Respondent also filed a replying affidavit sworn by its Human Resources Manager on 25 March 2024.
9. The Court has perused the Motion, affidavits, submissions and the record.
10. It is not in dispute that on 27 February 2020, the Court issued an *ex-parte* conservatory/injunctive order lifting the suspension of the Grievants and on 11 December 2020, the Court directed the Grievants to resume work without loss of any benefits or privileges. The Respondent was directed to file an affidavit in Court demonstrating compliance with the order.
11. Apparently, the Respondent did not abide with the order and the Union moved the Court asserting contempt of court.
12. The Court delivered a Ruling on 8 October 2021 wherein it found contempt was not proved.
13. Nevertheless, in the Ruling of 11 December 2020, the Court made an explicit finding and issued an order that the Grievants resume work without loss of any benefits or privileges.
14. The Respondent did not appeal against the Ruling and, therefore, the Grievants were technically and legally employees of the Respondent up to the date of the Ruling.
15. Therefore, in computing the wages due to the Grievants, the Respondent should have computed and paid the wages from 20 February 2020 up to 11 December 2020.

Conclusion and Orders

16. The Court orders the Respondent to compute and pay the Grievants the half-salaries they were entitled to during suspension from 20 February 2020 to the date of the Ruling on 11 December 2020 within the next 30 days' failure to which the wages to attract interest at court rates from 11 December 2020.
17. This Cause to be mentioned on a date to be agreed on hereinafter to confirm compliance.
18. Costs in the cause.

DELIVERED VIRTUALLY, DATED, AND SIGNED IN KISUMU ON THIS 8TH DAY OF MAY 2024.

RADIDO STEPHEN

JUDGE

Appearances

For Union Grievants in person



For Respondent Mr. Onsongo instructed by Onsongo & Co. Advocates
Court Assistant Chrispo Aura

