



Mathenge & 16 others v Youth Enterprise Development Fund (Cause 6544 of 2020) [2024] KEELRC 2027 (KLR) (2 August 2024) (Ruling)

Neutral citation: [2024] KEELRC 2027 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 6544 OF 2020**

**J RIKA, J
AUGUST 2, 2024**

BETWEEN

- DANIEL MATHENGE 1ST CLAIMANT**
- CLEOPHAS OMANYO 2ND CLAIMANT**
- EDWIN NJUGA 3RD CLAIMANT**
- ESTHER MWATHA 4TH CLAIMANT**
- FELISTUS MORAA 5TH CLAIMANT**
- HUSSEIN ADAN 6TH CLAIMANT**
- ISABELLA KATHAMBI 7TH CLAIMANT**
- JEMIMAH MURIUKI 8TH CLAIMANT**
- JORAM MURIMI 9TH CLAIMANT**
- JOSPHAT MAENDE 10TH CLAIMANT**
- JULIUS IRERI 11TH CLAIMANT**
- KENNEDY WAWIRE 12TH CLAIMANT**
- LEONARD OCHIENG 13TH CLAIMANT**
- MORRIS ONDIEK 14TH CLAIMANT**
- PETER MULWA 15TH CLAIMANT**
- SAMWEL NJUE 16TH CLAIMANT**
- WILSON KAHORA 17TH CLAIMANT**

AND

YOUTH ENTERPRISE DEVELOPMENT FUND RESPONDENT



RULING

1. This Court made a Ruling on 20th August 2021, directing the Respondent to revert to payment of salaries applicable to the Claimants, prior to the resolution of the Respondent's 76th Full Board meeting.
2. The Court ordered that arrears of salaries be paid to the Claimants.
3. The Respondent's CEO, Human Resource Manager and Payroll Officer were required to present themselves before the Court, to show cause why, they should not be punished for contempt, for failing to honour interim orders made in favour of the Claimants, on 11th December 2020.
4. The orders were challenged by the Respondent on Appeal, in Court of Appeal Civil Application No. E 317 of 2021.
5. On 1st November 2021, Parties consented before the Court of Appeal that the orders made by this Court on 20th August 2021, and all consequential orders are stayed; that the Appeal is filed within 30 days of the consent; and that Parties are at liberty to proceed with the substantive Claim before the E&LRC.
6. Parties then returned to the E&LRC where the Court was informed about attempts at voluntary settlement; about reinstatement of the Claimants under their original terms and conditions of service; and about reconstitution of the Respondent's Board, whereof one of the Claimants is said to have assumed the role of the CEO.
7. The ground appears to have shifted significantly, but voluntary settlement, has not been registered before the Court.
8. On 7th December 2023, the Claimants applied for amendment of their Claim, to reflect the new developments.
9. It was agreed that the Application is considered and determined on the strength of the Parties' Pleadings and Submissions. The Parties confirmed filing and exchange of their Submissions at the last mention before the Court, on 25th June 2024.

The Court Finds: -

10. This Court considered the issues in dispute and gave interim orders, whose execution, the Parties consented to stay, at the Court of Appeal.
11. They have indicated that there are developments which have taken place, having an effect on the substance of the dispute, and have time and again informed the Court of their intention to settle the dispute voluntarily.
12. Rule 38 of the [E&LRC \[Procedure\] Rules, 2016](#), requires that the Court shall regulate and manage its own proceedings.
13. The applications made by the Parties, the orders obtained in this Court, and the orders subsequently obtained by consent at the Court of Appeal, create doubt in the mind of the Court, on its ability to continue regulating and managing its proceedings, and in the end give an objective outcome.



14. This is more so when the Court has ruled that one party has disobeyed its orders, and the Parties consequently proceeded on Appeal and consented to stay execution of those orders, and consented further, to return to this Court to prosecute the Claim.
15. How will the Trial Court Control its proceedings, if it is not certain that its orders shall be obeyed by the Parties?
16. Why did not the Parties consent before this Court on staying execution or setting aside, of its orders dated 20th August 2021? The Court must be able to control its proceedings, and determine Claims expeditiously.
17. The Court does not feel it should exercise its jurisdiction in the substantive dispute, while proceedings relating to its orders on the salaries of the Claimants, and on contempt proceedings, is the subject of appellate proceedings.
18. For these reasons, the Court shall recuse itself, and order that the Claim is placed before the presiding Judge Claims Division, for reassignment before another Judge.

It is ordered:-

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- a. The undersigned Judge hereby recuses himself from hearing the Claim.
- b. The Claim to be placed before the presiding Judge Claims Division, for reassignment before another Hon. Judge.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 2ND DAY OF AUGUST 2024.

JAMES RIKA

JUDGE

