



Kenya Engineering Workers Union v Surtech Limited (Cause E972 of 2021) [2025] KEELRC 31 (KLR) (17 January 2025) (Judgment)

Neutral citation: [2025] KEELRC 31 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E972 OF 2021
SC RUTTO, J
JANUARY 17, 2025**

BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
SURTECH LIMITED RESPONDENT

JUDGMENT

1. The instant suit has been brought by the Claimant on behalf of the grievants, Julius Shokoli and Peter Opiyo, who it avers are its members. The Claimant avers in the Memorandum of Claim dated 9th August 2021, that the dispute which is with respect to payment of overtime, arose when the grievants herein worked on the Turkana Wind Project at Loyangalani, Turkana County. That when the said grievants reported back to the Respondent's headquarters in Nairobi, the Respondent refused to pay them. That they involved the union representative at the shop level but the same could not be resolved.
2. The Claimant further avers that it took up the matter and the parties tried to resolve the matter amicably. According to the Claimant, the Respondent could not keep its various promises, prompting it to invoke Section 62 of the *Labour Relations Act*, by reporting a trade dispute to the Ministry of Labour.
3. The Claimant avers that a conciliator was appointed and the parties' representatives met on 7th February 2020 and reached an agreement that the Respondent was to pay each grievant Kshs 100,000/= in four monthly installments. The Claimant contends that to date, the Respondent is yet to pay the grievants their overtime.
4. It is on account of the foregoing that the Claimant prays that the court issues an order against the Respondent herein to pay each of the two grievants the sum of Kshs 100,000/= plus interest at court rates from the time when the parties reached an agreement.



5. The Respondent neither entered appearance nor filed a Defence despite being served with the Notice of Summons and Memorandum of Claim. In this regard, the Claimant filed an Affidavit of Service sworn by Fredrick Muema Kilonzo on 15th December 2021, confirming service upon the Respondent. Annexed to the Affidavit of Service is a copy of the Notice of Summons bearing the receiving stamp of the Respondent.
6. Being satisfied with the return of service, the Court directed that the matter proceeds for formal proof hearing on 28th October 2024.
7. On the said 28th October 2024, the Claimant applied for leave to have the matter determined by way of documentary evidence. The said application was allowed hence the Court directed that the matter proceed by way of documentary evidence in terms of Rule 59 of the Employment and Labour Relations Court (Procedure) Rules, 2024.
8. Subsequently, the Court directed the Claimant to file written submissions within 14 days. The Claimant complied and the court has given due consideration to the said submissions.

Analysis and Determination

9. To my mind, the singular issue for determination is whether the grievants are entitled to the reliefs sought.
10. The crux of the Claimant's case is that the Respondent failed to pay the grievants overtime pay when they worked on the Turkana Wind Power Project at Loyangalani, Turkana County.
11. The record bears that the Claimant and the Respondent exchanged correspondence over the subject and when there was no end in sight, the Claimant reported a trade dispute to the Ministry of Labour and Social Protection.
12. Subsequently, on 20th February 2020, the Respondent's Managing Director by the name Felix Wambua, addressed the conciliator appointed to handle the trade dispute as follows:

“Dear Ms. Kamau,

Re: Agreement on the Trade Dispute

We refer to your letter dated 14th January 2020 reference...and the meeting we had in your offices on Friday, 7th February 2020 with the shop steward, Mr. Peter Opiyo and KEWU representative Mr. Allan Chanzu, Surtech's Finance Director Mr. Francis Kiarie and myself.

After a lengthy discussion, you advised us to go and discuss the matter with our employees and share with you the agreement. We are pleased to inform you that we have discussed and agreed to pay Kshs 100,000/= to Julius Shikoli and Kshs 10,000/= to Peter Opiyo as payment for their overtime worked at the Loyangalani project which ended in August 2017. We have also agreed to spread it into four months and pay in installments.

Below are signatures of the agreement: -

1. Mr. Peter Opiyo I.D No. signed (Employee)
2. Mr. Julius Shikoli ID No. signed (Employee)
3. Mr. Francis Kiarie I.D No. signed (Management)

We hope this concludes the matter.



Yours sincerely,
Francis Wambua
Managing Director."

13. Despite the commitment expressed by the Respondent through the letter reproduced above, there is no evidence on record that the Respondent made the overtime payments to the grievants.
14. What's more and as stated herein, the Respondent neither filed a Defence nor participated in the proceedings herein. As such, the Claimant's assertions that they were not paid as per the Agreement dated 20th February 2020 were not controverted.
15. In the circumstances, it goes without saying that the grievants are deserving of the reliefs sought.

Orders

16. Accordingly, the Court enters Judgment in favour of the two grievants herein, Julius Shokoli and Peter Opiyo and consequently, they are each awarded the sum of Kshs 100,000.00 being unpaid overtime. Interest shall apply on the said amounts at court rates from the date of filing the suit until payment in full.
17. The Respondent shall bear the costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17TH DAY OF JANUARY 2025.

STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Mr. Makale (Union Rep)

For the Respondent No appearance

Court Assistant Millicent

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.

