



**Kenya Union of Sugar Plantation & Allied Workers v Kibos Sugar & Allied Industries
(Cause 23 of 2020) [2025] KEELRC 533 (KLR) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 533 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 23 OF 2020
NZIOKI WA MAKAU, J
FEBRUARY 26, 2025**

BETWEEN

**KENYA UNION OF SUGAR PLANTATION & ALLIED
WORKERS CLAIMANT**

AND

KIBOS SUGAR & ALLIED INDUSTRIES RESPONDENT

RULING

1. The Claimant has filed an application dated 2nd December 2024 seeking the following prayers:
 1. Spent
 2. That the Honourable Court be pleased to adopt the computation filed by this applicant herein and on annexed ruling on 11th December 2020 as the Respondent has failed to comply with court order to date.
 3. That the Honourable Court be pleased to increase the adopted amount in paragraph 2 by 5% of 2022 and 5% of 2023 as per judgment delivered in Cause 68 of 2020 on 9th March 2020 as a fruit of bargaining agreement which lead to their suspension as union officials.
 4. That the Respondent to be compelled to adhere to the ruling of the Honourable Court dated 11th December 2020 that issued an order to the Respondent to unconditionally allow the grievants to resume work without loss of any benefits and privileges.
 5. That it is the interest of justice that this Honourable Court be please to compel the Respondent to pay the salaries, benefits and privileges to the Applicant from the date of ruling 11th December 2020 till now after blatantly disregarding court order in the above paragraph 4 despite being reminded and union officials presenting themselves.



6. That the order dated 11th December 2020 to stay to be in force till Respondent respect the court and implement its order fully. Failure the aggrieved will still get salaries benefits and privileges even after adoption because they have not either reinstated or terminated.
 7. That the ruling on 11th December 2020 is in force as is it emphasized by Honourable Justice Radido Stephen on paragraph 13 and 14 on ruling 4 as they never appeal against it.
 8. That this honourable court grant such further order, direction or declaration as it may deem.
 9. That costs be provided for.
2. The application is premised on the grounds apparent on its face and the supporting affidavit of Mr. Elly Onyango Odero. The Claimant contends that the Respondent has continuously disobeyed this Court's orders issued on 11th December 2020, which directed them to unconditionally reinstate the grievants. They assert that despite repeated reminders, the Respondent has persistently failed to comply, demonstrating a pattern of disregard for court directives. The Claimant further argues that granting this application is necessary to alleviate the hardship suffered by union officials due to the Respondent's ongoing defiance.
 3. In response, the Respondent filed grounds of opposition dated 16th December 2024 asserting that the application is misconceived, incompetent, incurably defective and an abuse of the court process.
 4. The application was canvassed by way of written submissions.

Claimant's Submissions

5. In support of the application the Claimant relies on the Court of Appeal's dicta in Refrigerator & Kitchen Utensils Ltd v Gulabchand Shah & others Civil Application No. 39 of 1990 (unreported) which states that court orders—whether null and void, regular, or irregular—must be obeyed until set aside. Further, that disobedience of court orders may result in contempt, punishable by committal or attachment. And finally, that a contemnor's application should not be entertained until the contempt has been purged. The Claimant also urges the court to take into account the judgment in Kisumu ELRC Cause No. 68 of 2020, which directed the parties herein to sign a two-year CBA by 1st May 2022, effective from 1st January 2022, incorporating a 10% wage increment spread over the two years in 5% annual increments, and the ruling of the 11th November 2024, which ordered the Respondent to allow the grievants to resume duty without loss of benefits and privileges. The Claimant identifies the following issues for determination:
 - i. Whether the Applicant's application should be dismissed on the grounds that the application as filed is fatally defective and/or on procedural technicalities;
 - ii. Whether the applicant is entitled to the reliefs sought.
6. On the first issue, the Claimant submits that failure to cite the specific provisions of law under which an application is brought should not prevent the court from administering substantive justice. They emphasize that procedural technicalities should not override the court's duty to dispense justice. In support of this position, they cite Order 51 Rule 10 of the Civil Procedure Rules 2010, which stipulates that no application shall be refused merely for failure to reference statutory provisions or for defects in form. They also rely on Articles 22(3)(d) and 159(2)(d) of *the Constitution*, which mandate the administration of justice without undue regard to procedural technicalities.
7. Moreover, the Claimant submits that the Respondent will not suffer any prejudice due to the manner in which the application has been drafted. They rely on the Court of Appeal's decision in Nicholas



Kiptoo Arap Korir Salat v Independent Electoral & Boundaries Commission & 6 Others [2013] eKLR, which held that procedural infractions that do not prejudice the opposing party should not invalidate an application, as justice should not be sacrificed at the altar of rigid procedural rules that may cause hardship and unfairness. Regarding entitlement to the prayers sought, the Claimant submits that the application should be allowed to uphold the sanctity of court orders. They point to the Respondent's continued failure to reinstate the grievants, despite the court order of the 11th December 2020, as well as their failure to pay salary arrears and employment benefits. In support of their argument, they cite Kenya Union of Printing, Publishing, Paper Manufacturers and Allied Workers v Timber Treatment International Limited [2013] eKLR, where the court held:

“For the period the employee is kept away unlawfully on interdiction or suspension, the employee is entitled to partial reinstatement and therefore a total of salaries due during that period.”

8. Furthermore, the Claimant submits that the Grievants had a legitimate expectation of reinstatement, which has been wrongfully denied. They assert that the Respondent, despite being fully aware of the court orders, has deliberately refused to comply. The Claimant emphasizes that court orders are not merely cosmetic but must be strictly adhered to. In support of this position, they cite Teachers Service Commission v Kenya Union of Teachers & another [2013] eKLR. In light of the foregoing, the Claimant urges the court to allow the application as prayed.

Respondent's Submissions

9. The Respondent submits that the application is res judicata, asserting that the orders sought are identical to those in the application dated 15th February 2024 which was determined on 8th May 2024. Additionally, the Respondent submits that the amount due to the Claimant for the suspension period between 20th February 2020 and 11th December 2020 was already computed by this court and duly paid. It cites the Court's ruling of the 24th July 2024, which determined the amount payable as Kshs. 711,440/-.
10. In support of the application being an abuse of the court process the Respondent relies on the Court of Appeal case of Muchanga Investments Limited v Safaris Unlimited (Africa) Ltd & 2 others Civil Appeal No. 25 of 2002 [2009] eKLR where abuse of the court process was defined as a party's utilisation of the judicial process for the irritation and annoyance of the opponent or filing of frivolous, vexatious, or oppressive claims. Furthermore, the Respondent submits that the prayer for reinstatement mirrors that which was sought in the Memorandum of Claim and was disposed of by the judgment delivered on 24th May 2024. It asserts that if the Claimant was dissatisfied, the proper recourse would have been to seek a review or file an appeal.
11. In support of its position, the Respondent references the court's ruling delivered on 8th October 2021, which held that reinstatement was no longer a viable option due to the extent in which circumstances had changed on the ground. It also highlights the dismissal of the application dated 16th November 2021, which sought to review the ruling of the 8th of October 2021. Additionally, the Respondent draws attention to the judgment delivered on, 24th May 2023, in which the only relief granted was for the payment of half salary during the suspension period. In light of the foregoing, the Respondent beseeches the court to dismiss the application with costs.
12. There must be an end to litigation. The Claimant has been before this Court seeking similar orders as the ones sought in this motion. The matter of reinstatement was dealt with in the judgment of the Court and therefore is not available as a remedy before this or any other court as the window for review



or appeal are way past and therefore unavailable to the Claimant and the Grievants. Similar orders have been sought before this Court, specifically, the application of 15th February 2024 which was determined on 8th May 2024 as well as the decision of the Court on 24th July 2024, which determined the amount payable as Kshs. 711,440/-. These motions settled in full the dispute before the Court and if there was failure to pay, enforcement mechanisms are available to the Claimants including execution and notice to show cause as appropriate. This Court cannot issue further orders for compliance through a motion as the one before Court but can be moved for purposes of execution. We cannot recompute sums awarded in the Judgment and which judgment has been partly (if the Claimant is to be believed) satisfied. The motion before the Court is therefore not fit for grant and is dismissed with costs to the Respondent as the motion is res judicata. The Claimant is not to file any other application in this case or before any other Employment and Labour Relations Registry on the same issues before me without formal leave of this Court being first sought and obtained.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 26TH DAY OF FEBRUARY 2025.

NZIOKI WA MAKAU, MCIARB.

JUDGE

