



Mayukuvu v Kenol Kobil Limited & another (Employment and Labour Relations Cause 13 of 2018) [2025] KEELRC 636 (KLR) (4 March 2025) (Ruling)

Neutral citation: [2025] KEELRC 636 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS CAUSE 13 OF 2018**

HS WASILWA, J

MARCH 4, 2025

BETWEEN

STEPHEN WEKATI MAYUKUVU CLAIMANT

AND

KENOL KOBIL LIMITED 1ST RESPONDENT

RUBIS ENERGY KENYA LIMITED 2ND RESPONDENT

RULING

1. The application before Court is an application dated 26th November 2024 filed by the Claimant seeking orders that the application be certified as urgent and service be dispensed with in the first instance. The Claimant further seeks that this Honourable Court be pleased to assess terminal dues awarded in the judgment delivered on 20th September 2024 by Hon. Justice Wasilwa, as follows: Kshs. 59,309 divided by 30 days, multiplied by 15 days, and further multiplied by 21 years, totalling Kshs. 622,744.50.
2. The Claimant also prays that the costs of the application be provided for. The application is based on the affidavit of Stephen Wekati Mayukuva and the grounds that judgment was entered in favour of the Claimant, awarding terminal dues that were not assessed to determine the precise amount. Counsel for the Claimant sought directions from the Court regarding the assessment, whereupon the Court directed the filing of a formal application. The Claimant submits that the assessment as prayed is fair and just and that the application has been brought without unreasonable delay. It is the Claimant's position that it is in the interest of justice for the orders sought to be granted.
3. The Claimant swore a supporting affidavit of even date, stating that he is a male adult of sound mind and the Claimant/Applicant herein, thus competent to swear the affidavit. He averred that judgment was issued by this Honourable Court on 20th September 2024 by Hon. Justice Wasilwa, awarding him terminal dues. He further deponed that the terminal dues were not assessed to determine the exact



figures, prompting his advocate to seek directions from the Court, which directed the filing of a formal application.

4. The Claimant prays that the terminal dues be assessed as follows: Kshs. 59,309 divided by 30 days, multiplied by 15 days, and further multiplied by 21 years, totalling Kshs. 622,744.50. He asserted that it is in the interest of justice that the orders sought be granted, emphasizing that the application was brought without unreasonable delay. He concluded by stating that the affidavit was sworn in support of the application for assessment of terminal dues and that the facts deponed therein are true to the best of his knowledge, information, and belief.

Respondent's Case

5. The Respondent filed a replying affidavit dated 11th February 2025, sworn by Sarah Muturi, the Human Resources Business Partner of Rubis Energy Kenya PLC (formerly KenolKobil Limited), who stated that she is familiar with the facts of the case and duly authorized to swear the affidavit on behalf of the Respondent. She averred that she had read and understood the Claimant's application dated 26th November 2024 and the supporting affidavit of Stephen Wekati Mayukuwa sworn on the same date, and she opposed the application.
6. She confirmed that on 20th September 2024, Hon. Justice Wasilwa entered judgment in favour of the Claimant for unfair termination of employment and awarded one month's pay in lieu of notice, overtime, seven months' salary as compensation for unfair termination, terminal dues, costs of the suit, and interest, with the total decretal sum awarded being Kshs. 739,005. She further stated that the Respondent had computed and paid the Claimant's terminal dues following his termination on 10th April 2018. However, following the judgment, the Respondent forwarded its records from the Claimant's personnel file on 6th December 2024, demonstrating that he had no outstanding terminal dues and reiterating its commitment to settle the decretal sum awarded.
7. Muturi further deponed, on the advice of Mr. James Muthui, an advocate of the High Court of Kenya and a partner at M/S Kaplan & Stratton Advocates, which she verily believed to be true, that the Claimant had not laid any basis to justify the assessment of his terminal dues at Kshs. 622,744.50. While terminal dues were awarded, the particulars thereof were not pleaded in the Further Amended Memorandum of Claim dated 19th January 2021, nor were any attempts made to prove the same during the trial or through averments in the Claimant's written submissions dated 21st June 2024. As such, the judgment was reflective of the claim as pleaded. She further asserted that the Claimant failed to explain why the said assessment, which was denied, could not have been procured prior to the determination of the case, as the same had been within his knowledge from the onset.
8. Muturi also stated, based on the advice of Mr. Muthui, which she verily believed to be true, that the issues raised by the Claimant at this stage regarding the alleged terminal dues were substantive matters already considered by the Court in its final determination. She further asserted that reviews are only permissible where a party seeks to correct an error or mistake apparent on the face of the record and not as a means to re-litigate substantive matters.
9. She contended that the Court, having rendered its final decision on 20th September 2024, is functus officio and cannot address the substantive matters sought to be re-litigated by the Claimant. According to her, the appropriate recourse for the Claimant would have been to lodge an appeal to the Court of Appeal rather than asking the Honourable Court to sit on appeal of its own decision. She concluded by stating that the application was entirely without merit and should be dismissed with costs to the Respondent. She affirmed that the facts deponed were true to the best of her knowledge, information, and belief, derived from her employment with the Respondent and the sources cited in the affidavit.



10. I have considered the submissions of the parties herein. This court awarded the claimant his terminal dues based on his contract of employment. The exact figure was not stated by the claimant. However, from the pleadings herein, the claimant was a member of NSSF. By virtue of section 35(6)(d) of the *employment act* 2007 he is not entitled to any other benefits unless clearly stated. His claim for gratuity as part of his terminal dues is also not payable for the same reasons. provided under section 35(6)(b) of *Employment Act* 2007 which states as follows:

This section shall not apply where an employee is a member of—

(b) a gratuity or service pay scheme established under a collective agreement.

11. In the circumstances of this case, the application to review is therefore not merited and is therefore dismissed accordingly. There shall be no order of costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 4TH DAY OF MARCH, 2025.

HELLEN WASILWA

JUDGE

