



**Amwayi & 64 Ex Employees of Rolmil Kenya Limited v Kenya Engineering Workers Union; Rolmil (Interested Party) (Miscellaneous Application E049 of 2025) [2025] KEELRC 1734 (KLR) (13 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1734 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E049 OF 2025**

**SC RUTTO, J**

**JUNE 13, 2025**

**BETWEEN**

**AMOS NEHEMIAH AMWAYI & 64 EX EMPLOYEES OF ROLMIL KENYA LIMITED ..... APPLICANT**

**AND**

**KENYA ENGINEERING WORKERS UNION ..... RESPONDENT**

**AND**

**ROLMIL ..... INTERESTED PARTY**

**RULING**

1. Vide a Notice of Motion dated 14<sup>th</sup> February 2025, the Applicants seek the following orders from this Court:
  - a. That a declaration be and is hereby issued that the Respondent trade union has breached its duty of fair representation to its members by unreasonably delaying to pursue claims for Rolmil Kenya Limited on behalf of the Claimants.
  - b. That a mandatory injunction be and is hereby issued compelling the Respondent to immediately commence negotiations and/or legal proceedings for the recovery of all outstanding benefits due to the Claimants within 14 days of this order.
  - c. That the Respondent be and is hereby ordered to compensate the Claimants for financial losses suffered due to the delay in pursuing their benefits claims, such amount to be determined by this Honorable Court.



- d. That the Respondent be and is hereby ordered to establish clear timelines and procedures for pursuing members' benefits claims and to report to this Honorable Court on implementation within 30 days.
  - e. That the Respondent's be ordered to pay the decretal sum together with interest which should be disbursed forthwith in a transparent manner.
  - f. That the Respondent be and is hereby ordered to pay damages for breach of the duty of fair representation to each Claimant, such amount to be determined by this Honorable Court.
  - g. That the costs of this application be borne by the Respondent.
  - h. That such further or other orders as this Honourable Court may deem fit and just to grant in the circumstances.
2. The Notice of Motion is premised on the grounds set out therein and the Supporting Affidavit sworn on 14<sup>th</sup> February 2025, by Amos Nehemiah Amwayi, the 1<sup>st</sup> Applicant. Grounds in support of the Motion are that the Applicants are former employees of Rolmil Kenya Limited who were declared redundant on 23<sup>rd</sup> April 2010. That the Interested Party intimated to the Ministry of Labour that they were willing to pay the Applicants' terminal dues as per the letter dated 26<sup>th</sup> April 2010.
  3. Mr. Amwayi further avers that together with other employees of the Interested Party, they proceeded to Court and were awarded a decretal sum of Ksh.363,065,128/- through a Ruling dated 14<sup>th</sup> October 2019 in Misc Appl.(sic) No. 41 of 2006.
  4. According to Mr. Amwayi, the Respondent has, however failed to exercise their duty and the Applicants have continued to be denied the dues owed to them.
  5. That the Respondent had issued a Proclamation Notice dated 19<sup>th</sup> December 2019. That Respondent entered into a consent with the Interested Party and released the proclaimed property despite a Court order dated 27<sup>th</sup> October 2020 that acknowledged that some of the property could be auctioned.
  6. That the Applicants have filed a complaint with the Ministry of Labour regarding the conduct of the Respondent, whose actions have been prejudicial to them.
  7. It is further averred by the Applicants that the matter last came up in Court on 7<sup>th</sup> March 2024, but the Respondent who filed the matter on their behalf has never followed up on their payment.
  8. Opposing the Application, the Respondent filed a Replying Affidavit sworn on 26<sup>th</sup> February 2025 by Wycliffe Nyamwata, its General Secretary.
  9. Mr. Nyamwata states that the Applicants have not disclosed the true facts of the matter as the Interested Party is no longer in operation, hence the Respondent has been in Court to follow up for the Directors to be made liable.
  10. That, this is the second Application which has hindered the progress of this matter. According to Mr. Nyamwata, the grievants in ELRC Cause Number 41 of 2006 have continuously made Applications delaying the matter, the last one being by 287 employees, which was dismissed on 7<sup>th</sup> March, 2024.
  11. That the current Application is meant to further delay the progress to conclude Cause 41 of 2006, as this has been filed with full knowledge that the parties had been allowed to negotiate the modalities of payment.



12. Mr. Nyamwata further deposes that the orders sought are not grantable as the Applicants' application for enjoinder as Claimants in Cause No. 41 of 2006 was dismissed which left the Respondent herein the sole Claimant.
13. That, the Honourable Court has already pronounced herself on the matter and should leave the parties to proceed and finalize ELRC Cause number 41 of 2006 to benefit the Respondent's members being the grievants.

### **Submissions**

14. The Application was canvassed by way of written submissions. Both parties complied and the Court has given due consideration to their respective submissions.

### **Analysis and Determination**

15. I have considered the Application, the Respondent's Replying Affidavit as well as the rival submissions and the primary issue that stands out for determination is whether the Applicants herein have properly moved the Court in light of the substantive and final orders sought in the instant Miscellaneous Application.
16. In the cases of *Rockland Kenya Ltd v Commissioner General of KRA & another* (2020) eKLR and *Nairobi West Hospital Limited v Joseph Kariha & Another* [2018]eKLR, it was held that substantive orders cannot be issued in miscellaneous applications.
17. Similarly, in the case of *Witmore Investment Ltd v County Government of Kirinyaga & 3 others* (2016) eKLR, it was held that where a party seeks an order that in effect appears to resolve with finality an issue in controversy or a contested issue, the application ceases to be interlocutory and it is a misconception to describe it as such.
18. In the case herein, the nature of the orders sought by the Applicants are substantive and final in nature. Therefore, it follows that a resolution of the issues raised will require the taking of evidence. This will not be possible in a miscellaneous application, as parties will be denied an opportunity to be heard.
19. In the instant Motion, the Applicants have raised weighty issues touching on the Respondent's duty of fair representation to its members. To this end, the Applicants have sought inter alia; a declaratory order to the effect that the Respondent has breached its duty of fair representation; an order for compensation for the financial losses they have suffered due to the Respondent's delay in pursuing their benefits; an order that the Respondent pays the decretal sum together with interest as well as damages for breach of the Respondent's duty of fair representation to each Applicant.
20. To find that a trade union has breached its duty of fair representation to its members is not a straightforward matter that can be determined in a summary manner without a proper trial.
21. Under the Employment and Labour Relations Court (Procedure) Rules, 2024, a suit may be instituted by way of a Statement of Claim or a Petition and in the case of judicial review proceedings, in accordance with Sections 8 and 9 of the [Law Reform Act](#) and Order 53 of the Civil Procedure Rules.
22. Therefore, in the event the Applicants were desirous to have the Court determine the matters raised herein with finality, they ought to have moved the Court in a proper manner as envisaged under these Court's Rules.
23. For the foregoing reasons, the Notice of Motion dated 14<sup>th</sup> February 2025, is struck out with no orders as to costs.



DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13<sup>TH</sup> DAY OF JUNE 2025.

.....

**STELLA RUTTO**

**JUDGE**

In the presence of :

Ms. Ng'ang'a for the Applicants

Mr. Araka instructed by Mr. Makale for the Respondent

Millicent Court Assistant

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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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.

