



Kenya Engineering Workers Union v Rolmil Kenya Limited; Directors-Diamond hasham Lalji - (Director Rolmil (K) Ltd & another (Intended Interested Party) (Cause 41 of 2006) [2024] KEELRC 510 (KLR) (7 March 2024) (Ruling)

Neutral citation: [2024] KEELRC 510 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 41 OF 2006
B ONGAYA, J
MARCH 7, 2024**

BETWEEN

KENYA ENGINEERING WORKERS UNION CLAIMANT

AND

ROLMIL KENYA LIMITED RESPONDENT

AND

DIRECTORS-DIAMOND HASHAM LALJI - (DIRECTOR ROLMIL (K) LTD INTENDED INTERESTED PARTY

SAMUEL DICKENS ABOK AND 286 EX-EMPLOYEES OF ROTMIL KENYA LIMITED INTENDED INTERESTED PARTY

RULING

1. The intended interested party filed the application dated 28th September, 2023 through Kabuthia Kamau & Associates Advocates seeking the following orders:
 - a. That the Honourable Court be pleased to grant leave to the 286 Ex-employees of Rotmil Kenya Limited (the respondent herein) to be enjoined as interested party in this matter.
 - b. That the Respondents be ordered to pay the decretal sum of Kshs. 363,065,128/= together with interest which should be disbursed forthwith in a transparent manner and in default execution do proceed.
 - c. That the payment be done directly to the interested party.
 - d. That this Honourable court deems fit or expedient to grant suo moto.
 - e. That the cost of this application be borne by the defendant.



2. The application was based on the following grounds:
 - a. The intended interested party are former employees of Rotmil Kenya Limited who were awarded a decretal sum of Kshs. 363,065,128/=.
 - b. That by a ruling of the court dated 5th October 2022, before Hon. Lady Justice Maureen Onyango, the court ordered that the Respondents' directors appear in court and they initiated that they are ready and willing to pay the sum.
 - c. However, the advocates involved in the matter have been frustrating the process of payment.
 - d. That subsequently payment by the respondents continue to be unjustly held and they continue to appoint and change Advocates that further delays the matter.
 - e. That further due to issues with the union who are intentionally stalling payment and complaints against their actions to the Ministry of Labour and Central Organization of Trade Unions.
 - f. The applicant are apprehensive that if the actions are allowed to continue they will be unable to enjoy the fruits of the judgement.
 - g. That the laws of equity provide that justice delayed is justice denied and the unwarranted delay by the respondents to remit what is due to the applicants is a grave injustice.
 - h. It is fair, reasonable and just for the applicants herein that, this application should be allowed and the orders prayed should be granted.
3. The application was further based on the three supporting affidavits sworn by Samuel Dickens Abok, Sabastian Kyalo Telela and Simon Lumumba Kivai.
4. The first deponent, Samuel Dickens Abok swore and reiterated the grounds in the application and further stated as follows:
 - a. That he is a male adult of sound mind and one of the former employees of the respondent in the suit. He was awarded Kshs. 363,065,128/=. He annexed a copy of his employee I.D as SDA-1.
 - b. That a schedule of payment had been prepared and which he annexed as SDA-2.
 - c. In support of the ground of having reported the matter of their issues with the union to the Ministry of Labour and the Central Organisation of Trade Unions, he annexed letters as SDA-3.
 - d. He urged that the application herein be allowed.
5. The second deponent, Sabastian Kyalo Telela stated that he was one of the former employees of the respondent in the suit. He stated that had benefited from the ruling of 5th October 2022 by Onyango J and similarly reiterated the grounds relied upon in the application. He annexed a copy of his identification card as SKT-1. He stated that his basic salary at termination was Kshs. 9,755/= hence his dues as per the ruling of the court was supposed to be Kshs. 1,486,806/= leave payment not inclusive. He urged that the Court allow the application to be enjoined as interested parties to enable them to enforce their right.
6. The third deponent Simon Lumumba Kivai was equally a former employee of the respondent and annexed a copy of his employee identification card as SLK-1. He was also a beneficiary of the ruling of 5th October 2022. He stated that he worked for the respondent since 5th January 1980 until 29th April



- 2010 when he was declared redundant and not paid his dues. He stated that his basic salary was Kshs. 9,755/=. Hence, his dues as per the ruling was supposed to be 2,182,566/= leave payment not inclusive.
7. The claimant also decree holder filed on 18.12.2023 an opposition to the notice of motion and through J. N. Namasake & Company Advocates. It also filed the affidavit of the General Secretary, Wycliffe Nyamwatta. It was urged as follows:
- a. That all along the claimant in the matter has been the Kenya Engineering Workers Union, KEWU, who operates in accordance with the *Labour Relations Act, 2007* and its constitution, which does not allow its members to directly negotiate anything with their employer.
 - b. The applicants in the application herein were not involved in the entire dispute that resulted to the ruling of 5th October, 2022.
 - c. The applicant was not truthful in their application when they stated that the directors of the respondent company are ready and willing to pay the sum as alleged and instead the directors had all along stated that they did not have any money to pay the decretal sum. Hence, the reason the union or claimant was pursuing the directors for decretal amount and for them to be committed to civil jail in case they fail to pay.
 - d. When two of the directors appeared before Court, they pleaded for time to negotiate with the claimant and try to come up with a consent, a process that is ongoing. The interested parties herein in making the instant application are interfering with the process of negotiation.
 - e. All along the matter has been between the claimant and the respondent and that the interested parties have never been directly involved.
 - f. The claimant had entered into a recognition agreement with the respondent, concluded, and signed a Collective Bargaining Agreement (CBA) on 19th December 2002, which was registered by the Industrial Court, as it was then, on 5th February 2003. The interested parties herein were not involved.
 - g. That failure to implement the said CBA is what led the claimant herein to file the instant cause No. 41 of 2006 and obtained an award dated 6th August 2008 hence making the matter between the two parties, the claimant and the respondent.
 - h. The claimant union has taken various legal processes since institution of the matter up until present moment and through the Advocate on record.
 - i. The application by the interested parties is an abuse of the court process, which should not be entertained. The claimant or decree holder should be allowed to deal with the matter until it is finalized.
 - j. Further, there is no room for the interested parties in this matter and that they should let the claimant or decree holder and the respondent or judgement debtor continue with their negotiations. The applicants should not be enjoined as interested parties and the application herein be dismissed.
8. Counsel for the respondent employer Mr. Maroa Advocate submitted that the respondent was opposed to the application but did not file submissions in that regard. Submissions were filed for the applicants and the claimant. The Court has considered the material on record in that regard and returns as follows.



9. To answer the 1st issue, the Court returns that the application is said to be by Samuel Dickens Abok and 286 ex-employees of Rolmil Kenya Limited. The persons to be enjoined as interested parties have not been identified at all except those who have made the affidavits in support of the application. The authority to act has been signed by only 59 persons. It is said they were ex-employees but no evidence has been provided in that regard. Nothing is said of the other alleged and intended interested parties. Rule 9 of the Employment and Labour Relations Court (Procedure) Rules required the applicants to file a letter of authority signed by all the other parties. The rule also required the application to be accompanied by a schedule of the names of other applicants in the application, their address, description, and the details of wages due or the particulars of any other breaches and reliefs sought by each applicant. The Court returns that the application was incompetent to the extent that the rule was not complied with and there is a real danger, if the orders sought are granted, as it would be with respect to undisclosed alleged applicants and unknown extent of the benefit sought by each. In making that finding, the Court has considered that the application is such a proceeding amounting to a suit as envisaged in the definition of “suit” under Rule 2 thereof.
10. The 2nd issue is whether the applicants have established a legitimate case for joinder in a suit where final orders were made and the outstanding proceedings are for satisfaction of the final orders. It is submitted that the applicants are seeking to be enjoined to duly ensure that the final decision is adhered to and the decree is duly implemented without inordinate delay because, justice delayed is justice denied. The final decree flows from the award dated 06.08.2008 by the then Industrial Court awarding in terms of the claimant union’s demands set out in the award. The record shows that thereafter the claimant union through its counsel on record took all necessary steps for satisfaction of the decree. The applicants have not shown how the claimant union would delay satisfaction of the decree or final award. In any event, the applicants have not shown a proceeding before the Court to which they seek to be enjoined. The award is elaborate that the union filed the suit for the benefit of its members. The applicants may therefore be valid beneficiaries of the award. However, as submitted for the claimant union, joinder of an interested party may be allowed where there are pending or on-going proceeding. The interested parties have not raised any issue before the Court in a pending or on-going proceeding for which they seek to assist the Court to determine one way or the other. The only issue before the Court is satisfaction of the award or decree and the record shows that the claimant union has taken appropriate steps, and, the judgment debtor has stated that it opposes the application.- The Court returns that there appears to be no proceedings before the Court for the proposed interested parties to be enjoined. The record shows that proceedings for the satisfaction of the decree proceeded, the directors of the employer were summoned, and, the Court ordered that should they fail to pay the decretal sum the claimant union will be at liberty to apply for the committal of the directors to civil jail for failure to comply with Court order.
11. In view of the findings, the application is liable to be dismissed. The Court has considered that the applicants may be members of the claimant union and no orders on costs.

In conclusion, the application filed for the proposed interested parties is hereby dismissed with no orders on costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 7TH MARCH 2024.

BYRAM ONGAYA

PRINCIPAL JUDGE

