



Obonyo & 50 others v Kenya Engineering Workers Union (Miscellaneous Application 132 of 2018) [2024] KEELRC 2285 (KLR) (25 September 2024) (Ruling)

Neutral citation: [2024] KEELRC 2285 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION 132 OF 2018**

**NJ ABUODHA, J
SEPTEMBER 25, 2024**

BETWEEN

JOHN DENIS OBONYO AND 50 OTHERS APPLICANT

AND

KENYA ENGINEERING WORKERS UNION RESPONDENT

RULING

1. The Applicants filed application dated 19th October, 2023 under Section 12(1)(g)(2) (3),4(1) (a) of the *Employment and Labour Relations Court Act*, Rules 17(1)(2)(3)(4) & (5) of the *Employment and Labour (Procedure) Rules*, 2016, seeking for orders of the court to allow the Applicants leave to file this Application for review and the court to review its ruling dated 28th October 2022.
2. The Applicants also sought orders that pending the hearing and determination of this application, there be a stay of execution of the ruling issued herein on 28th October,2022.
3. The application was supported by the grounds set in the Application herein and the Affidavit of John Denis Obonyo one of the Applicants herein.
4. The Applicants averred that they were former employees of Nalin Nail Works Limited and were awarded a decretal sum of Kshs 18,012,032.85 and on 30th July 2018 the said amount in full was deposited in the Respondents bank account together with costs of Kshs 1,169,835/=. That by a ruling of 11th June, 2019 Hon. Lady Justice Wasilwa ordered that the Respondent pays them their dues in transparent manner. That some of them are yet to receive their dues 5 years down the line and the Respondent has been engaging them in needless court battles.
5. The Applicants averred that they filed an application dated 29th August,2022 to pursue the fruits of their judgment and the court issued a ruling dated 28th October, 2022 which ruling infringed on their rights to pursue justice in the matter as the Applicant was ordered to pay costs of Kshs 50,000/=



- despite having a valid reason to file the application which was that the court had issued orders against Respondent as they had not paid their dues as per court orders.
6. The Applicants averred that pursuant to the ruling the Respondent issued a notice dated 4th November,2022 asking them to visit their offices to claim their owed dues. That on 7th November,2022 the Respondent was asked to provide up to date payment records to allow them be notified of payment as their notice stated that it did not apply to those who had been fully paid. That the Respondent did not respond and since the notice was about to lapse, 17 of them went to the Respondent's office on 23rd November,2022 to claim their dues and were told to go back on 24th November 2022 in the morning.
 7. The Applicants averred that when they went back the Respondent's had employed goons who attacked them and injured him which and there was an ongoing matter in Milimani Criminal Court case No. 1806 of 2022. That justice delayed was justice denied and the ruling dated 28th October,2022 as stood put them at a disadvantage as they were not able to enjoy the fruits of the Judgment which was a grave injustice.
 8. The Respondent on the other hand filed their Replying Affidavit sworn on 5th April,2024 and averred that the application was yet again an abuse of court process and ought be dismissed.
 9. The Respondent averred that the deponent of the supporting Affidavit one John Denis Obonyo had not only being paid his dues in full but as a matter of fact was overpaid and was required to refund the monies which he was overpaid beyond his lawful entitlement. Therefore, he could not be a lawful grievant in the matter. That the said Mr.Obonyo did not claim or allege that he had not been personally paid since he stated he was pursuing this application on behalf of other undisclosed Applicants without exhibiting any written authority from the said undisclosed Applicants and further that the said Mr. Obonyo had filed all manner of applications in the court seeking all manner of orders all which had been dismissed with costs.
 10. The Respondent averred that an application for review under *Employment and Labour Relations Court (Procedure) Rules*, 2016 could only be brought under Rule 33 and not 17 as invoked by the Applicants. In addition, the Application could only be founded on four grounds established under Rule 33 which is discovery of new evidence, mistake or error apparent, clarification of the ruling and any other sufficient reason. That the Applicants have not proved any of the grounds under Rule 33.
 11. The Respondent averred that courts have emphasized that the Application for review has to be filed within reasonable time and in this case this application was filed in October 2023 when the Ruling was delivered in October 2022 which was a year later hence inordinate delay.
 12. The Respondent averred that the ground that the ruling of 28th October,2022 infringes on the rights of the Applicants to pursue justice constitutes a ground for appeal as it goes to the merits of the ruling and not one of the grounds of review under Rule 33.
 13. The Respondent denied ever assaulting the undisclosed applicants represented by Mr. Obonyo and that in the said criminal case Mr. Obonyo is the only complainant. The criminal case was orchestrated with intention of painting the Respondent in bad light and as an excuse for Mr. Obonyo not to pay the Respondent's costs of Kshs 50,000/= he was ordered to pay the Respondent by the court and that this court should not entertain the gimmicks by Mr. Obonyo.
 14. The Respondent further averred that in the ruling of 28th October,2022 Hon. Lady Justice Mbaru indicated that Mr.Obonyo was a vexatious litigant and penalized him to pay costs of the Application of Kshs 50,000/= to the Respondent before filing any other matter or application herein which costs



stand unpaid. That the said Mr. Obonyo was a vexatious litigant hell bent to receive payments for grievants who may have died or are yet to receive their dues.

15. The Respondent averred that it was ready and willing to pay any unpaid Applicant their respective dues so long as they present themselves to the Respondent's offices with their original ID cards. That for any grievant who may be deceased that their legal representative to physically present themselves to the Respondent offices with their original ID and original grant of Letters of Administration of the estates of deceased grievant.
16. The Application was dispensed of by written submissions.

Determination

17. The court has considered the pleadings and submissions filed by the parties herein and notes that different applications have been filed by parties and dispensed with.
18. The issue of locus of Mr. Obonyo filing Applications in this court on behalf of the Applicants was dealt with vide the ruling of this court delivered on 27th October, 2022 by Hon. Lady Justice Mbaru where the said Applicant one John Obonyo was declared as a vexatious litigant. He was ordered to pay the Respondent Kshs 50,000/= before filing any suit or application herein. The said Mr. Obonyo has not paid the said amount or appealed the decision if he was dissatisfied with the same. This court emphasizes the need for Mr. Obonyo to adhere to court orders. He ought to have paid the said costs of the Application Kshs 50,000/= to the Respondent before filing this application since no stay orders of the same were sought before this application.
19. The Court notes that the said Mr. Obonyo despite the Respondent raising this issue of locus, did not make good his standing by swearing a further affidavit attaching an authority to act for the Applicants as noted by the court then. The Applicants have also approached this court on the wrong provisions of law since Review is provided for under Rules 33 of the *Employment and Labour Relations Court (Procedure) Rules, 2016* and not Rule 17.
20. The above notwithstanding, Section 16 of the *Employment and Labour Relations Court Act* gives the Court power to review its judgements, awards, orders or decrees in accordance with the Rules. Rule 33 of the *Employment and Labour Relations Court (Procedure) Rules, 2016* provides for review as follows:
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 - (1) A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling—
 - (a) if there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made;
 - (b) on account of some mistake or error apparent on the face of the record;
 - (c) if the judgment or ruling requires clarification; or
 - (d) for any other sufficient reason.
33. The Applicants did not raise any of the above grounds for review; that is, if there was discovery of new and important evidence, mistake or error on the face of record, any clarification with the ruling and any other sufficient reason. The ground of the ruling infringing on their rights goes to the merits of the Ruling and can only constitute a ground for appeal and not review.



34. The court notes that the Application had been brought one year after delivery of the Ruling on 27th October,2022 without the Applicants explaining the reasons for the delay. The court finds this to be inordinate delay which can not be entertained. The claims of assault are irrelevant to this court and furthermore apart from Mr. Obonyo no details of any other person assaulted have been provided. The same is left to the criminal court to determine.
35. The Respondent indicated that it is willing to abide by the directions of Hon.Wasilwa to make the payments in transparent manner and requested any Applicant who have not been paid to present themselves to their offices and if the Applicant is deceased their legal representatives with proper original documentations for payment. The Court hereby directs that such persons do appear at the respondent's premises with the necessary documents in order to be paid their final dues as stated by the respondent.
36. As for the Applicant, he is not entitled to stay orders of the Ruling when he has defaulted by filing this application without making the payment of costs as directed by this court.
37. In the upshot the Application lacks merit and is hereby dismissed with costs to the Respondent. This court orders the Mr. Obonyo to pay all the costs due to the Respondent strictly before taking any further action in this matter.
38. It is so ordered.

DATED AT NAIROBI THIS 24TH DAY OF SEPTEMBER, 2024

DELIVERED VIRTUALLY THIS 25TH DAY OF SEPTEMBER, 2024

ABUODHA NELSON JORUM

PRESIDING JUDGE-APPEALS DIVISION.

