



Kenya Engineering Workers Union v M/s Metal Crowns Limited (Cause E145 of 2022) [2024] KEELRC 2566 (KLR) (18 September 2024) (Ruling)

Neutral citation: [2024] KEELRC 2566 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E145 OF 2022
K OCHARO, J
SEPTEMBER 18, 2024**

**BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
M/S METAL CROWNS LIMITED RESPONDENT**

RULING

Introduction

1. By a Notice of Motion application dated 24th February 2024, expressed to be under Section 16 of the *Employment and Labour Relations Court Act* 2016, and annexed on the grounds obtaining on the face of it and the supporting affidavit sworn by Wycliff A. Nyamata, sworn on 2nd February 2024, the Claimant/Applicant seeks:-
 - a. That the Honourable Court be pleased to issue an order against the Respondents' Directors (Gurdip Singh, Navin Shah and Rajin Shah) to appear in Court to show cause why they should not be held in contempt of court orders and or direct the OCS of Industrial Area Police Station to arrest and produce them in the Honourable Court for sentencing to civil jail.
 - b. That the Honourable Court do issue an order to parties herein to sign the Collective Bargaining Agreement (CBA) proposed as filed in court by the Claimant hence adoption of the same.
2. The application is resisted by the Respondent on the grounds set out on the replying affidavit sworn on 19th February 2024, by John Karani – the Human Resource Manager.
3. When the application came up for hearing, this court directed that it be canvassed by way of written submissions. The parties' submissions are on record.



The Application

4. The Claimant asserts that by the Ruling dated 28th September 2023, this Court allowed the application dated 4th March 2022 for the Respondent to disclose and or produce audited financial statements for the two years (15th August 2018 – 30th July 2020).
5. Further the said ruling, was delivered in the presence of the Respondent's Counsel. The order emanating from the ruling was later extracted and served on the Respondent and its Counsel.

The Claimant further stated that it is yet to be served with the documents as directed by the court. The delay to oblige the Court order is the intentions, ill-intentioned and aimed at making the members lose confidence in its representative ability, and as a result withdraw their membership.
6. The orders sought in the application should be granted for the prime reason that the dignity and integrity of the Court must be protected. Parties should not be allowed to disobey court orders with impunity.

The Response

7. The Respondent contented that it has not been served with the court order of 28th September 2023.
8. The Respondent further asserts that it has no employees who are members of the Claimant Union and consequently there cannot be a basis for the grant of orders sought by the Claimant/Applicant. The employees who were members of the Union, joined the management team and this was communicated to the Claimant Union.
9. It is further contended that the current application and suit are an abuse of the court process, as there is pending another suit where the subject matter is whether the Claimant/Applicant has members working for Respondent, suit number ELRC Cause No. E626 of 2022.
10. It is stated further that the agreement between the parties expired on 31st July 2020 and the same did not have a default clause and consequently, it came to an automatic termination upon expiry.
11. The instant application is an abuse of the court process.

Analysis and Determination

12. I have carefully considered the application, the grounds in support thereof, the supporting affidavit, the response by the Respondent, and the submissions filed by both the parties herein, and only one prime issue emerges for determination then whether the application is merited.
13. It bears reporting that contempt of court is in the nature of criminal proceedings and therefore grave consequences would normally flow from contempt of court proceedings on the contemnors if found guilty of contempt at the end of the proceedings. Further upon this premise that contempt has marked service of the order alleged to have been violated a pivotal ingredient to be considered in an application such as the instant application. See *Sheila Cassat Issenberg and Another v Anthony Masetba Kinyanjui* [2021] eKLR, cited by counsel for the Respondent.
14. In contempt proceedings, the burden of proving this vital ingredient always lies on the person asserting violation of the court order and urging a sanction(s) against another. The Claimant/Applicant asserts that the court order was served on the Respondent. I am not persuaded that service was affected as from the documents filed there is no affidavit of service or any material from where it can be deduced that the same was actually done.



15. The application seeks that specific persons alleged to be directors of the Respondent company be punished for contempt of court order. However, I see no material presented by the Claimant/Applicant and proof that the persons are directors of the Respondent company and that they were personally served with the instant application.
16. By reason of the foregoing premises this court declines to grant limb 1 of the application.
17. Equally limb 2 of the application is a proper candidate for rejection as in essence, it seeks for an order that if granted could prematurely conclude the main suit without evidence being taken from the parties as required by law.
18. Further, I hold that the affidavit in support of the application is sketchy as regards the material in support of the limb.
19. In the upshot, the application is without merit, it is hereby dismissed.

READ, SIGNED AND DELIVERED ON 18TH DAY OF SEPTEMBER 2024.

OCHARO KEBIRA

JUDGE

In the presence of:-

..... for Applicant

Mr. Kibuse for the Respondent

