



Kenya Union of Commercial Food and Allied Workers Union v Spurs Security Services Limited (Cause 1569 of 2010) [2023] KEELRC 91 (KLR) (20 January 2023) (Ruling)

Neutral citation: [2023] KEELRC 91 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1569 OF 2010
SC RUTTO, J
JANUARY 20, 2023**

BETWEEN

KENYA UNION OF COMMERCIAL FOOD AND ALLIED WORKERS UNION CLAIMANT

AND

SPURS SECURITY SERVICES LIMITED RESPONDENT

RULING

1. What is before me for determination is the Notice of Motion Application dated December 13, 2021 by the Claimant/Applicant through which it seeks a review of the Court’s Judgment delivered on July 9, 2019.
2. The Application is premised on the grounds appearing on its face and on the Affidavit of Alfred Oduki, Joseph Mumo and Joseph Langi through which they aver that the Court stated that the three of them did not sign the letter of authority authorizing Raphael Kaka to execute the requisite documents and give evidence on their behalf, yet it is on record that the three of them appended their signatures the said letter of authority.
3. The Respondent opposed the Application through the Affidavit of Samuel Nyabera Muholi who averred that Alfred Oduki and Joseph Mumo had passed on. That Joseph Mumo died in 2007 and he attended his funeral whereas Alfred Oduki deserted duty sometimes in 2010 and died soon thereafter.
4. On October 13, 2022, the Advocate informed the Court that two of the Applicants had since passed on hence the Application was only in respect of the surviving Applicant, being Joseph Langi Kioko.
5. The Application was canvassed through written submissions. It was submitted on behalf of the Applicant that the error on the Judgment is self evident as Joseph Langi Kioko was erroneously left out. That the Respondent erroneously wrote the cheque in favour of Joseph Langi Kioko instead of Ekwaro Kizito who was part of the award hence it is the said Ekwaro who was paid.



6. The Respondent submitted that despite the court stating that the said Joseph Langi Kioko did not sign the letter of authority, he was one of the beneficiaries of the cheque no. 000667 sent to the Applicant's Advocates in settlement of the Judgment. That therefore, the Application is unnecessary as Joseph Langi Kioko had already been paid.
7. Evidently, the main issue for determination is whether the application for review should be allowed as prayed.
8. From the record, it is clear that the name of Joseph Langi Kioko is contained in the letter of Authority and there is a signature against the same. Therefore, it is not in doubt that he had given his authority to Mr. Raphael Kaka to execute all pleadings and give evidence on his behalf. Indeed, what appears to be in contention is whether the said Joseph Langi Kioko was paid at the time the Respondent was settling the Judgment.
9. The Applicant submitted that the cheque in settlement of the Judgment was made in the names of Joseph Langi Kioko instead of Ekwaro Kizito who was part of the Award.
10. On record, is a copy of the letter dated August 17, 2020 from the Respondent's Advocate transmitting the cheque no. 000667 to the Applicant's Advocates. The letter contains the name of Joseph Langi Kioko as one of the beneficiaries of the said payment.
11. As stated herein, it was submitted on behalf of the Applicant that the payment was made to one Ekwaro Kizito instead of Joseph Langi Kioko. There was no plausible explanation why Joseph Langi Kioko was not paid from the proceeds of the cheque despite his name appearing on the forwarding letter.
12. In the event the name of the said Ekwaro Kizito had been left from the list of the beneficiaries of cheque no. 000667, then the prudent thing to do was to call for the payment in respect of Ekwaro Kizito.
13. The evidence as it is, confirms that the said Joseph Langi Kioko was paid hence the Application is as good as spent. What appears unsettled can be sorted out by the parties without the Court's intervention through the instant Application.
14. Consequently, the Application is dismissed with no orders as costs.

DATED, SIGNED and DELIVERED at NAIROBI this 20th day of January, 2023.

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STELLA RUTTO

JUDGE

Appearance:

Ms. Omamo for the Claimant/Applicant

Mr. Keyonzo for the Respondent

Abdimalik Hussein 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 15th March 2020 and subsequent directions of 21st 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.

STELLA RUTTO

JUDGE

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