



Odima & another v General Secretary Kenya National Private Security Workers Union & another (Cause E011 of 2022) [2023] KEELRC 855 (KLR) (13 April 2023) (Ruling)

Neutral citation: [2023] KEELRC 855 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E011 OF 2022
MA ONYANGO, J
APRIL 13, 2023**

BETWEEN

PETER ODIMA 1ST CLAIMANT

FRANCIS MADEGWA 2ND CLAIMANT

AND

**GENERAL SECRETARY KENYA NATIONAL PRIVATE SECURITY WORKERS
UNION 1ST RESPONDENT**

REGISTRAR OF TRADE UNIONS 2ND RESPONDENT

RULING

1. There are two applications in this matter which are the subject of this ruling. The first is a Notice of Motion application dated July 21, 2022 whilst the second is a Notice of Motion dated January 31, 2023 filed under a certificate of urgency. Both applications were filed by the Claimants.
2. The first application dated July 21, 2022 is brought under Rule 17(1) (2) of the Employment and Labour Relations Court Procedure Rules 2016, Section 23 of the *Employment Act, Labour Relations Act*, Union constitution and all other enabling provisions of the law and seeks for orders that:
 - a Spent
 - b Spent
 - c Pending hearing and determination of the instant application and thereafter the main claim, the applicants be paid their salary arrears for the month of January, February, March, April, May 2022 onwards withheld by the 1st Respondent including monthly rent for branch offices together with all outstanding arrears as envisaged under the union's constitution and the *Employment act*.



- d That the 2nd Respondent to ensure compliance of the orders above
3. The application is supported by grounds on its face and the supporting affidavit of the 1st Claimant, Peter Odima sworn on July 21, 2022. The Applicants' case as I understand it is that he is aggrieved by the Respondents action of withholding their salaries for failing to attend a meeting on January 21, 2022 which according to the Claimants, was communicated on short notice.
 4. According to the Applicants, unless the orders sought are granted, they will suffer irreparable damage and further frustrate their efforts in effectively representing the members and discharging duties as branch secretaries.
 5. Before the matter was fixed for inter-partes hearing, the court issued an order on July 27, 2022 compelling the 1st Respondent to pay the Applicants salaries/remuneration for the month of June onwards as stipulated under the unions Constitution and the law pending the hearing and determination of the application dated July 25, 2022.
 6. A perusal of the record reveals that the said application was not opposed by the Respondents and the inter-partes hearing never took place. Instead, they filed an application seeking for among other orders, to have the orders issued on March 24, 2022 be set aside, altered, varied or vacated as having lapsed and that further, the 1st Respondent be allowed to convene a National Executive Council meeting to deliberate on issues affecting the union.
 7. The court gave interim orders and allowed the 1st Respondent to convene the said meeting. At this point, it is worth noting that the said application has since been overtaken by events.
 8. The Second application is dated January 31, 2023 and was filed by the Claimants seeking for orders that: -
 - a Spent
 - b This Honourable court be pleased to cite the 1st Respondent for contempt proceedings for disobeying court orders issued by this court on July 27, 2022 for failure to remit salaries/remuneration for the month of June and December 2022 as stipulated under the unions constitution and the law.
 - c Costs be in the course
 9. The 1st Respondent opposed this application vide a further supplementary affidavit filed on February 13, 2023 and sworn by Isaac G M Andabwa , the 1st Respondent's National General Secretary on February 7, 2023. A replying affidavit that had been filed earlier, on April 22, 2022 was relied upon.
 10. In that supplementary affidavit, the deponent has asserted that the Applicants have been playing diversionary and delaying tactics in this matter making the claim a fishing and snooping expedition on the on-going investigation with a view to undermine and micromanage the building of a watertight case against them.
 11. It was the 1st Respondent's case that the applicant obtained an order for reinstatement of salary *ex-parte* on July 27, 2022 after the trial court had directed the parties to proceed and file written submissions to the application.
 12. It is further asserted that, that notwithstanding, the 1st Respondent has complied with the orders of July 27, 2022 and paid the applicants their salaries



13. It is the 1st Respondent's case that now that the applicants are enjoying a salary for obvious reasons, they are not keen to have the matter concluded on its merit.
14. The Claimants filed a response to the supplementary affidavit on February 24, 2023 and stated that the 1st Respondent has partly complied with the order dated July 27, 2022, as it has not paid them for the month of June 2022 and that they were suspended in December 2022 and paid on half salaries.
15. According to the Claimants, the suspensions are not legal as the due procedure was not followed.
16. The court directed parties to file written submissions. The Claimants filed their submissions on February 8, 2023 whereas the 1st Respondent filed its submissions on February 23, 2023.

Determination

17. I have carefully considered the applications, the rival affidavits, the submissions of the parties as well as the authorities that were cited.
18. In my view, the two applications are intertwined and in my view the second application will in fact dispose of the two applications once and for all.
19. The main issue for determination therefore is whether the 1st Respondent is in breach of court orders issued herein on July 27, 2022 and what orders the Court should make upon a finding of contempt on his part.
20. In determining this issue, it is important that I reproduce the terms of the said order which is the subject of the instant application.
 - i. That: The Application is hereby certified urgent
 - ii. That: The same to be served on the Respondents who shall make a response thereto within 14 days of service.
 - iii. That: Pending the hearing and determination of instant application Interpartes, an order is hereby issued compelling the 1st Respondent to pay the applicants salaries/remuneration for the month of June 2022 onwards as stipulated under the unions constitution and the law to last until or further orders of the court.
 - iv. That: Mention on August 15, 2022 before the duty Judge for directions on hearing and disposal.
21. The 1st Respondent in the supplementary affidavit filed in court on February 13, 2023 showed that the y had indeed complied with the said orders by paying the Claimants as evidenced EX GM 3(a) and (b).
22. This was not disputed by the Claimants and in fact, in their response to the supplementary affidavit filed in court on February 24, 2023, they admitted that the 1st Respondent had partly complied with the order dated July 27, 2022 as it had not paid them for the month of June 2022.
23. So how are the Respondents in contempt of the court orders?
24. In my view, no credible evidence has been adduced in the affidavit that the orders of July 27, 2022 were disobeyed
25. In any case, the Claimants have acknowledged that they had been paid their salaries and although they allege that they were suspended on December 2022, they have conceded they are on half salary and this is an issue that cannot be addressed in this ruling.



26. For those reasons I decline to grant the orders sought in the application dated January 31, 2023. The application is hereby dismissed with no orders as to costs.
27. This court has noted with concern that the parties have been filing applications after applications and thereby delaying the final hearing and determination of this case.
28. I hereby direct that main suit be set down for hearing on priority basis within the next 30 days to avoid delaying this case any further.
29. Orders accordingly

DATED AND DELIVERED VIRTUALLY IN ELDORET THIS 13TH DAY OF APRIL 2023.

MAUREEN ONYANGO

JUDGE

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