



**Kenya Shipping, Clearing and Warehouses Workers Union v Sunripe (1976) Limited (Employment and Labour Relations Cause 2324 of 2017) [2023] KEELRC 1393 (KLR) (2 June 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1393 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 2324 OF 2017**

**B ONGAYA, J  
JUNE 2, 2023**

**BETWEEN**

**KENYA SHIPPING, CLEARING AND WAREHOUSES WORKERS  
UNION ..... CLAIMANT**

**AND**

**SUNRIPE (1976) LIMITED ..... RESPONDENT**

**RULING**

1. The claimant filed an application on February 13, 2023 in person and its officer Samson Omechi Ongera appeared in that behalf. The application was by the notice of motion dated February 9, 2023 brought under section 12 of the *Employment and Labour Relations Court Act*, 2011, Rule 17 of the Employment and Labour Court (Procedure) Rules, 2016, Articles 41 and 159 of the *Constitution* of Kenya and all other enabling provisions of law. The application is for orders:
  - a. (spent).
  - b. An order adopting the Schedule containing 29 formwer employees’ terminal benefits tabulations as annexed herein and marked Soon 1.
  - c. An order directing the respondent to immediately release to the claimant union all the terminal benefits under the judgment for the 29 remaining grievants, being Kshs 1, 808, 331.00 as full and final tabulated terminal benefits forthwith.
  - d. An order directing the respondent to pay interest at Court rates and in respect of prayer 3 above.
  - e. Any other orders the honourable Court may deem fit to grant for the ends of justice.
  - f. Costs of the application payable by the respondent.



2. The application was based on the annexed supporting affidavit of Samson Omechi Ongera and upon the following grounds:
  - a. On August 17, 2018 the Court entered judgment in favour of the claimants. The Court ordered, 'I enter judgment in favour of the claimant union and order the respondent to pay terminal dues to the 103 employees who are the subject of this dispute. The parties are directed to come up with the amount payable in line with payments made to the 71 employees and report back to court within 30days. Payments will be made directly to employees and not through the union. The respondent will pay the claimant union costs in the sum of Kshs 50,000.00 to cover reasonable expenses and disbursements.'
  - b. On July 26, 2019 the Court ruled that the parties having failed to agree as per judgment of the Court the Court directs that the employees be paid as follows – (1) One month's salary in lieu of notice as provided in Section 40(1) (f) of the Employment Act for all employees including those on temporary or seasonal employment contracts. (2) Pay in lieu of annual leave capped at three (3) years for all employees including those on temporary or seasonal employment contracts. (3) Ex-gratia pay at one (1) month's salary. The Court further directed that should parties disagree on the figures they will go to the Labour Officer who will assist them to tabulate the same.
  - c. The parties failed to agree and the claimant sought the assistance of the Labour Officer and the respondent started to implement terminal dues in batches of 4, 5, 10, and so on. The respondent has failed to implement the matrix as was mutually agreed upon before the Labour Officer Ms Grace Mweresa. The applicant moved the Court in an application dated October 5, 2020 and the Court directed the respondent to complete the payments.
  - d. As at November 2, 2021 only 74 out of 103 grievants had received the terminal benefits and the respondent has completely refused to pay the remaining 29 grievants a sum of Kshs 1, 808, 331.00 for each grievant being a month notice pay Kshs 13, 780.00; one-month ex-gratia Kshs 13, 780.00; and, 3 years' leave Kshs 33, 390.00. The schedule of the names of the 29 unpaid grievants is annexed.
3. The respondent filed an application dated February 9, 2023 through Ojijo Senaji & Company Advocate. The application was under sections 1A, 1B, 3A and section 80 of the Civil Procedure Act, order 42 rule 6 (1) and (2) (a) and order 45 rule 1(1) (a) and (b) of the Civil Procedure Rules 2010 and all other enabling provisions of law. The respondent prayed for orders:
  - a. (spent).
  - b. (spent).
  - c. (spent).
  - d. That the Honourable Court be pleased to summon the 29 workers pending settlement and whether they were employees of the respondent and whether they issued instructions to the claimant union.
  - e. That pursuant to prayer 3 above the Honourable Court be pleased to review or vary the judgment herein upon scrutinizing new material facts.
  - f. A declaration that the judgment is and has been fully settled by the respondent or applicant.
  - g. Costs of the application be borne by the claimant.



4. The application was based upon the supporting affidavit of Chris Kaluku, the respondent's Human Resource Manager and upon the following grounds:
  - a. Judgement was entered herein on August 17, 2018 by Onyango J A ruling was delivered on July 26, 2019. The respondent has partially complied with the ruling and the judgment. The respondent has discovered new material that the 29 grievants in issue never gave the claimant union instructions. That the 29 were either not employees or they had resigned and their dues duly settled. The 29 workers purportedly represented by the claimant should be summoned to confirm the new material.
  - b. In the circumstances it is just to declare the judgment duly settled.
  - c. Teresia Sebeya is amongst the 29 and she has informed Chris Kaluku that most of the grievants were not aware that the suit had been filed on their behalf.
  - d. The claimant has unfairly or fraudulently received the judgment sums.
  - e. One Martin Mugendi resigned by letter dated September 9, 2017.
5. The claimant opposed the respondent's application by filing the replying affidavit of Samson Omechi Ongera sworn on February 15, 2023. It is urged that it is speculative that the v 29 workers did not authorise the claimant union to file suit and speculative that they are not respondent's employees. That is an afterthought and calculated to delay the satisfaction of the decree. The respondent filed in the Court of Appeal NAI Civil Application No 315 of 2019. The Court of Appeal delivered ruling allowing the application and the respondent was ordered to file and serve the notice of appeal within 7 days and record of appeal within 45 days. The Court's jurisdiction to review is exhausted because the respondent opted to appeal the judgment. It is also urged that fraud on the part of the claimant is not established.
6. The replying affidavit by Chris Kaluku sworn on May 22, 2023 was filed for the respondent to oppose the claimant's application. It was urged that the claimant union was not instructed by the 29 employees in issue to file the instant suit. The Court should summon the 29 grievants to show if they indeed instructed the union.
7. The Court has considered the parties' respective submissions. The Court returns as follows:
  - a. The respondent purported to appeal against the judgment. The respondent having exercised that option is hereby precluded from seeking to review the judgment. The claimant's submission in that regard is upheld.
  - b. In any event the respondent has not shown any fresh evidence which with due diligence could not be made available at the hearing of the suit. If indeed the 29 grievants had not given instructions for the suit to be filed, that was a fact the respondent, with due diligence, should have raised at the hearing. Further, as a matter of principle, the claimant union was the named claimed and its authority to file suit for the benefit of the members is inherent and no special instructions, in the opinion of the Court, was needed in that regard. The authority was inherent, express by reason of the grievants being union members, and, in any event implied by reason of the statutory role of the union to protect workers' rights and to pursue employers to deliver on the contract of service.
  - c. The Court returns that the respondent's application must therefore fail.



- d. As for the claimant union's application, the Court finds that the respondent has not disputed the schedule of payments as made by the labour officer per schedule exhibited for the claimant. The orders will issue to adopt the schedule.
  - e. As for the mode of payment of the dues to the 29 grievants in issue, the Court returns that on August 17, 2018 the Court already ordered thus, 'Payments will be made directly to the employees and not through the union.' That express order is still in place and not varied by a review or otherwise. The prayer in the application that the payment be released to the claimant union will therefore be declined.
8. In conclusion the applications filed for the parties each dated February 9, 2023 are hereby determined with orders:
1. The application filed for the respondent is hereby declined and dismissed.
  2. The application filed for the claimant union will partially succeed with orders:
    - a. The schedule containing 29 former employees' terminal benefits tabulated and marked as Exhibit Soon 1 is hereby adopted by the Court and incorporated in the order herein as per the schedule.
    - b. The respondent to release to each of the 29 grievants their respective dues by July 1, 2023 failing, interest to be payable thereon at Court rates from the date of this ruling until full payment.
  3. Each party to bear own costs of the applications.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 2<sup>ND</sup> JUNE, 2023.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

