



East Africa Portland Cement & Anor v Kipchumba & 228 others; Kenya Chemical and Allied Union (Respondent) (Cause 2119 of 2014) [2023] KEELRC 1634 (KLR) (7 July 2023) (Ruling)

Neutral citation: [2023] KEELRC 1634 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2119 OF 2014**

**AN MWAURE, J
JULY 7, 2023**

BETWEEN

EAST AFRICA PORTLAND CEMENT & ANOR APPLICANT

AND

JULIET KIPCHUMBA & 228 OTHERS CLAIMANT

AND

KENYA CHEMICAL AND ALLIED UNION RESPONDENT

RULING

1. The applications herein for determination are two fold as follows even though the court will also dispose the others as well:- Application dated May 31, 2023 filed by the applicant East Africa Portland Cement and makes the following prayers:-
 1. That this instant application be certified as extremely urgent and by reason of the obvious abuse of court process and contempt of court orders perpetrated by the respondent union (discernible from the cause of this honourable court's record) and the attendant gross violation of justice that has occurred and the gross violation to the applicant company's right that has also occasioned (and continues to occur) be disposed off *ex debito justitiae* and before hearing inter partes.
 2. That the *ex parte* garnishee order nisi issue by this honourable court, the learned honourable learned Justice Byram Ongaya on May 30, 2023 be hereby *ex debito justitiae* and by reason of the obvious abuse of court process and contempt of court orders perpetrated by the respondent union (discernible from the face of this honourable court's record) and the attendant gross violation of justice that has occurred and the gross violation to the applicant



company's rights that has also occurred (and continues to occur) be discharged and or set aside pending the hearing of this instant suit *inter partes*.

3. That the respondent union's notice of motion application dated May 25, 2023 be dismissed in its entirety with costs and the order of May 30, 2023 be set aside/discharged.
 4. That the costs of this instant suit be borne by the respondent union.
2. The application is supported by the affidavit deponed by Florence Mitey the respondent's company secretary. They pray that the order made by Honourable Byram Onyaga on May 30, 2023 be discharged or set aside and she avers the claimant cannot be paid the entire decretal amount as they do not represent the 693 grievants and the claimant refused to disclose there are other parties to the suit.
 3. She also says the claimant did not disclose that the delay herein was not just caused by the respondent as there has been about 50 applications by grievants about representation *inter alia*.
 4. She also depones that the respondent has severally claimed the applicant is winding up and that is not proved.
 5. The deponent says the applicant's current employees and their families will also suffer by reason of the freezing of the accounts. She says they have a workforce of 584 employees.
 6. The deponent avers that there has been no delay or refusal by the applicant to settle the decretal amount and is willing to engage the respondent in out of court settlement.
 7. The application by advocates Gichuki Kingara & Co. Advocates for the 210 applicants/decreed holder dated June 12, 2023 seeks the following prayers
 1. That this application be certified urgent and service of the same be dispensed with in the first instance.
 2. That leave be granted to the applicants listed in schedule A annexed hereto and represented by the firm of Gichuki Kingara & Co advocates to execute their portion of the decree independently, by way of issuance of warrants of attachment and any other mode of execution available in the sum of kshs 636,482,603.40/- or such other sum as the court will allow with interest thereon at either 12% or 6% from the date of judgment.
 3. That this honourable court do determine the rate of interest applicable to that decree herein from the date of judgment and specifically determine whether it shall be at the commercial rate of 14% the court rate of 12% or the statutory rate of 6% provided by section 26(1) of the [civil procedure act](#) where the decree is silent on the rate.
 4. That the honourable court be pleased to recognize and include overtime and shift pay awarded in the judgment herein for the period of 2012 to 2018 in the sum of kshs. 230,609,740.54/- as set out in schedule B annexed hereto with interest thereon post judgment at a sum of kshs. 107,223,529.35/- as provide by section 26(2) of the [civil procedure act](#).
 5. That the honourable court be pleased to recognize, add and include the basic salary and house allowance arrears awarded by this honourable court for six months in the year 2018 calculated at kshs 122,324,508.00/- as set out in



schedule c annexed hereto and the interest thereon post judgment at a sum of kshs 56,880,896.22 as provided by section 26(2) of the *civil procedure Act*.

6. That the honourable court be pleased to order that all monies garnisheed by this honourable court be prorated to all the 465 grievants and the garnishee and respondent herein be compelled to deposit 45% of all monies realized by the process of garnishee proceedings owing to the applicants herein with the firm of Gichuhi Kingara & Co advocates, to Gichuki Kingara & company cooperative bank account number 01136XXXXXXXXXXXX for onward transmission of the same to the 210 applicants herein until payment in full.
 7. That this honourable court do issue a warrant of attachment by way of a prohibitory orders prohibiting the respondent/judgment debtor either by itself or its agents from transferring or charging LR No 8784/144, LR no 8784/145 LR NO 8784/653 L.R NO 7815/1, LR NO 10424/5, LR NO 10424/6, LR NO 10424/7, LR NO 10424/8,, LR NO 10424/9, LR NO 10424/10, LR NO 10424/11 LR NO 10424/12, LR NO 10424/13, LR NO 10424/14, LR NO 10424/15, LR NO 10424/16, LR NO 10424/17, LR NO 10424/18, LR NO 10424/19, LR NO 10424/20, LR NO 10424/21, LR NO 10424/22, LR NO 10424/23, LR NO 10424/24, and this order be registered by the Chief Land Registrar on the relevant land registrar pending further orders.
 8. That the Deputy Registrar do execute prohibitory orders annexed hereto.
 9. That costs of this application be provided for.
8. The supporting affidavit deponed by Dokata Warlo and dated June 12, 2023 was considered by the court.

Determination

9. The court has interacted with this suit alongside my other colleagues close to two decades and there has been numerous applications, submissions and court orders.
10. In view of the foregoing this court will go straight to the point. The prayers by the applicant East African Portland cement Company Limited have been interrogated by the court very conscientiously. The court will go back to its orders of 16th day of May 2023 where orders were made that claimant's grievants were at liberty to execute as per court order dated January 13, 2020. Further the court ordered that all grievants were at liberty to execute.
11. In view of the fact that all grievants were given leave to execute the application for decree nisi against the applicants bank accounts as listed in the claimant's application dated May 25, 2023 was part of the execution.
12. Justice Byram Ongaya did grant orders for decree nisi dated May 31, 2023. The other grievants did not object to the application of the claimant dated May 25, 2023. The only concerns from the applications of the application of the 210 grievants represented by Kingara Gichuki8 & Co advocates and by 229 grievants represented by themselves through one of the Juliet Chepchumba are on the allocation of funds. They have not opposed the garnishee application by the claimant.



13. The garnishee themselves have not opposed the application. The court received the replying affidavits of 4th and 5th garnishee and except saying they do not have enough funds to satisfy the decretal sum they have not opposed the application. The replying affidavits of the other garnishees were not in the court file.
14. The counsel for the 210 grievants Messrs Gichuki Kingara & Company prays to be given leave to execute their portion of the decree independently for Kshs 636,482,603/40 or such other sum as the court will allow with interest. The court is at a loss how all the various grievants will execute their sums separately. It does not seem practical and the court find granting such a prayer with due respect would not serve the intended purpose. All grievants are joined together and they will benefit from their judgment by working together.
15. The applicant obviously has assets but how the same can be divided and execution is carried out separately is difficult to decipher. The court just can conclude that the grievants are coming to the court to “baby sit” them in the process of execution. Indeed this should be done at the Deputy Registrars going forward. This court will not get involved in the execution process.
16. The court finds the prayers by the applicants vide their application dated May 31, 2023 is not merited and is dismissed accordingly and that is due to the aforesaid reasons one: The order granted by Justice Byram Ongaya on May 30, 2023 are merited as they are part of the execution process as per the court order granted on May 16, 2023. Secondly, the application by the Union dated May 25, 2023 is not opposed by any of the other grievants and so is merited and the decree nisi orders are upheld.
17. Also the court must bring this matter to its logical conclusion if justice is to be served and so the decree absolute order is granted as per order 3 of the said application of May 25, 2023. The other orders as per prayers 3 and 7 are also granted.
18. As pertains to the application of the 210 grievants by Gichuki Kingara & Co Advocates the court will make a blanket order to cover all the grievants including the 229 and the one grievant represented by DK Muema advocate that all proceeds realised from whichever source to be shared on prorata basis as will be calculated by the legal s of all the grievant. It is not practical to expect all the grievants to execute a portion of their decree separately.
19. The other prayer no 7 of Gichuki Kingara’s application is granted and so the order should be registered on behalf of all the entire grievants.
20. Prayer 8 of the said application by Gichuki Kingara & Co advocates dted June 12, 2023 is also granted.
21. However it is late in the day to start granting fresh awards as prayed in 3, 4 and 5 and 6 and so those are declined. These prayers were awarded in the judgment delivered therein and so are part of the calculations in the execution process and this court will not make any other orders in that regard.
22. In making these orders the court wish to emphasize that any money recovered from the garnishees will be divided as ordered and also any moneys from the proceeds of sale shall equally be shared on prorata basis.
23. The court has endeavoured to handle all the applications filed since May 16, 2023 and firmly holds the execution proceedings should now proceed accordingly. At the same time all costs of all these applications should be in the cause.
24. In closing the best is if all parties sat and agreed on the best way to settle and to share out the decretal sum but then that would only be by the consensus of all the parties. That will depend on their good will. Having said so these above are the orders of the honourable court.



Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 7TH DAY OF JULY, 2023.

ANNA NGIBUINI MWAURE

JUDGE

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 has 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 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.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

