



**Kenya Building Construction, Timber and Furniture Industries Employees Union v  
Timsales Limited (Employment and Labour Relations Cause E029, E030 & E031 of 2021  
(Consolidated)) [2023] KEELRC 2692 (KLR) (31 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2692 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
EMPLOYMENT AND LABOUR RELATIONS CAUSE  
E029, E030 & E031 OF 2021 (CONSOLIDATED)**

**HS WASILWA, J**

**OCTOBER 31, 2023**

**BETWEEN**

**KENYA BUILDING CONSTRUCTION, TIMBER AND FURNITURE  
INDUSTRIES EMPLOYEES UNION ..... CLAIMANT**

**AND**

**TIMSALES LIMITED ..... RESPONDENT**

**RULING**

1. This Court delivered its ruling on 5<sup>th</sup> October, 2023 to the effect that the grievants in addition to what was calculated by the labour officer are entitled to payments of their salaries with effect from June, 2018 to 27<sup>th</sup> July, 2018, which is to be agreed by the parties or if not agreed upon the parties to submit to this Court for adoption their calculations for consideration.
2. It is evident that the parties did not agree as they have filed their submission on the issues. The the claimant filed its submissions on 18<sup>th</sup> October, 2023 and the Respondents filed on 25<sup>th</sup> October, 2023.

**Claimant's Submissions**

3. The Claimant submitted that based on the direction given by this Court in its ruling of 5<sup>th</sup> October, 2023, counsel for the Claimant attempted to call Counsel for the Respondent in vain. Counsel stated that it then opted for the second route as directed by Court and has attached the dues for the grievants as indicated in the schedule attached to the submissions, which he urged this Court to adopt.

**Respondent's Submissions.**

4. The Respondent on the other hand submitted that pursuant to the Memoranda of Claims instituting these causes, the Claimant sought among other reliefs "salary for days worked" but that it did not



disclose what dates this head of claim related to. Nonetheless that this court by its judgment delivered on 17/01/2023, held that the grievants are entitled to their terminal dues including among others “days worked for and not paid for”. Consequently, the court directed the County Labour officer to compute the dues in line with the judgment delivered in the matter.

5. It is however submitted that the labour officer could not compute dues on some of the awarded items namely; payment in lieu of leave and “days worked for and not paid for” due to the vague nature of the claims.
6. It is argued that this Court by its ruling of 5<sup>th</sup> October, 2023 reviewed the judgment and held that the grievants were not entitled to payment in lieu of leave but that they were entitled to payment of salary for month of July 2018. The Respondent argued that the clarification made by the Court to specify the duration when the grievants were not paid was improper considering that the claimant did not file a pleading either amending its Memoranda of Claim or at all stating the period it alleges that the grievants were not paid salary. That the specification made after judgement has not availed the Respondent an opportunity to defend itself on the claim for alleged non-payment of July 2018 salaries and that had it been presented with a clear claim, it would have adduced evidence to defend its position.
7. The Respondent maintains that the approach adopted in this matter to fill in gaps post judgment is highly prejudicial and in any event unknown to law. He argued that evidence can only be required on specific matters and not general and/or sweeping claims that are incapable of defence.
8. Based on the foregoing, Counsel submitted that the Claimant did not plead with specificity the period in respect of which the grievants worked but were not paid. Also that it did not disclose what amount it claimed under this head. Thus, the claim is amorphous and therefore impossible of being defended and to direct the Respondent to make payment for undisclosed period is unfair.
9. He submitted that it is trite law that parties are bound by their pleadings are espoused in the case of *Republic v Commissioner of Domestic Taxes Exparte Sony Holdings Limited* [2019] eKLR at paragraphs 88 and 89 the Honourable Court held that:

“The function of a pleading in civil proceedings is to alert the other party to the case they need to meet, (and hence satisfy basic requirements of procedural fairness) and further, to define the precise issues for determination so that the court may conduct a fair trial The cardinal rule is that a pleading must state all the material facts to establish a reasonable cause of action (or defence). The expression “material facts” is not synonymous with providing all the circumstances. Material facts are only those relied on to establish the essential elements of the cause of action. It is of course, a basic principle that particulars of claim should be so phrased that a defendant may reasonably and fairly be required to plead thereto. This must be seen against the background of the further requirement that the object of pleadings is to enable each side to come to trial prepared to meet the case of the other and not be taken by surprise. Pleadings must therefore be lucid and logical and in an intelligible form; the cause of action or defence must appear clearly from the factual allegations made.”

10. The Respondent also relied on the case of *Independent Electoral and Boundaries Commission & Another v Stephen Mutinda Mule & 3 Others* [2014] eKLR at pages 3 the Court of Appeal cited the Supreme Court of Malawi case of *Malawi Railways Ltd v Nyasulu* [1998] MWSW 3 where the Honourable Court held that parties are bound by their pleadings and Supreme Court of Nigeria case



of *Detoun Oladeji (Nig) Ltd v Nigeria Breweries Plc* S.C. 91/2002, where Judge Pius Aderemi J.S.C. held that:

“It is now a very trite principle of law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded.”

Other judges on the case expressed themselves in similar terms, with Judge Christopher Mitchell J.S.C. rendering himself thus;

“In fact, that parties are not allowed to depart from their pleadings is on the authorities basic as this enables parties to prepare their evidence on the issues as joined and avoid any surprises by which no opportunity is given to the other party to meet the new situation.”

11. To put more emphasize on their arguments, the Respondent cited the case of *Elizabeth O. Odiambo v South Nyanza Sugar Co. Ltd* [2019] eKLR at paragraph 16, where the Honourable Court stated as follows: -

“The court, on its part, is itself bound by the pleadings of the parties. The duty of the court 8, A upon the specific matters in dispute, which the parties themselves have raised by their pleadings. The court would be out of character were it to pronounce any claim or defence not made by the parties as that would be plunging into the realm of speculation and might aggrieve the parties or, at any rate, one of them. A decision given on a claim or defence not pleaded amounts to a determination made without hearing the parties and leads to denial of justice.”

12. Based on the above case law, it was argued that the judgment of the Court did not indicate the period in respect of which the Claimant claimed the grievants worked for but were not paid for. No evidence was lead in this regard during the hearing of the matter. Further, that no application was presented for review of the judgment to stipulate the period in respect of which this alleged claim relates to for the Court to give the duration in its ruling.

13. The Respondent also cited the case of *Kenya Power & Lighting Company Limited v County Government of Nairobi & Attorney General* [2017] eKLR at paragraph 42 the Honourable Court held that:

“The function of a pleading in civil proceedings is to alert the other party to the case they need to meet (and hence satisfy basic requirements of procedural fairness) and further, to define the precise issues for determination so that the court may conduct a fair trial, the cardinal rule is that a pleading must state all the material facts to establish a reasonable cause of action (or defence). The expression “material facts” is not synonymous with providing all the circumstances. Material facts are only those relied on to establish the essential elements of the cause of action; a pleading should not be so prolix that the opposite party is unable to ascertain with precision the causes of action and the material facts that are alleged against it.”

14. In conclusion, the Respondent reiterated that it disagrees with the procedure adopted in this matter to compute figures post judgment when the court is *functus officio*. However, it was submitted on without prejudice basis that the the attached correspondence is sufficient evidence that the grievants were paid their July 2018 salaries.



15. I have examined all the averments and submissions of the parties herein.
16. The order of this court was to compel the parties to calculate figures payable to the claimants as explained in its judgment herein.
17. The respondents chose not to make any computation instead submitting on an issue which in my view can be a subject of an appeal and for which no appeal has been preferred to date.
18. That notwithstanding, the respondents have attempted to bring fresh pleadings which has not been tested as evidence before court as proof that they paid July salaries. These pleadings cannot be evidence of payment as the same were never produced before this court.
19. In the absence of any computation to the contrary as ordered by court, I will adopt the computation submitted by the claimants dated 17<sup>th</sup> October, 2023 as the salary for the claimants not paid in June and July 2018 all totalling kshs.8,963,896/= plus costs and interest. These amounts will form part of the Judgment of the court.

**RULING DELIVERED VIRTUALLY THIS 31<sup>ST</sup> DAY OF OCTOBER, 2023.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:-**

Magata for Claimants – present

Muli for Respondent – present

Court Assistant – Fred

