



**Kenya Concrete, Structural, Ceramic Tiles, Wood Plys and Interior Design
Workers Union v Intex Construction Limited (Employment and Labour Relations
Cause E559 of 2020) [2023] KEELRC 2495 (KLR) (18 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2495 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E559 OF 2020
AN MWAURE, J
OCTOBER 18, 2023**

BETWEEN

**KENYA CONCRETE, STRUCTURAL, CERAMIC TILES, WOOD PLYS AND
INTERIOR DESIGN WORKERS UNION CLAIMANT**

AND

INTEX CONSTRUCTION LIMITED RESPONDENT

RULING

1. The Claimant/Applicant filed a Notice of Motion dated May 9, 2023 seeking the following orders:
 1. spent
 2. That an order be and is hereby issued adopting the tabulation pursuant to the court order of October 6, 2020.
 3. Any other order this Honourable Court deems fit to grant.

Claimant/Applicant’s Case

2. The Claimant’s application was supported by an affidavit sworn by its general secretary, Dishon Angoya.
3. The Claimant avers that this court issued orders on October 6, 2020 as follows:
 - i. That pending the hearing and determination of the main suit an interim order is hereby issued directing the Respondent by itself, agents, assigns, servants and or otherwise to immediately commence deductions and remittance of trade union dues from all the members of the Claimant as per the check off forms already served upon them in March 2019 and to continue



in deductions and remittance into the Claimant's authorized and specified Bank Account as per the Legal Notice No. 50 of 2014 dated May 8, 2014.

- ii. That an order is hereby issued directing the Respondents by themselves, their agents, assigns, servants and or representatives or any other person claiming through them or otherwise to pay ALL the unremitted union dues to the Claimant's account as prescribed in Form "S" duly served upon it from April 2019-to-date from its own funds as provided for under section 19(6) of the Employment Act.
 - iii. That an order is hereby issued restraining the Respondent their agents, assigns, servants, and or representatives or any other person claiming through them or otherwise from any form of harassment and/or intimidation upon the Claimant's members on the basis of this suit.
 - iv. That mention be on 9/11/2020 to confirm compliance.
4. The Claimant avers that this court delivered a ruling dated March 24, 2022 and ordered:
- i. That the court thereby cites Mr Vikas Gehlot or the duly recognised directors of the Respondent company for contempt for disobeying orders of court issued on October 6, 2020.
 - ii. That the Contemnor/ Respondent Mr Vikas Gehlot or the directors of Intex Company Limited be compelled to purge contempt.
 - iii. That the Contemnor/ Respondent is fined Ksh. 50,000 and in default 3 months imprisonment to pay within 15 days.
 - iv. That the costs of this application be borne by the Respondent/ Contemnor.
5. The Claimant avers the aforesaid orders were extracted by the Claimant on March 31, 2022 and served upon the Respondent on April 1, 2022 and the Respondent only satisfied order (iii) by paying the fine of Kshs 50,000.
6. The Claimant avers that it applied for warrant of execution vide a letter dated October 25, 2022 and the Deputy Registrar directed the Claimant to make a formal application for orders adapting the tabulations for execution dated December 7, 2022.

Respondent's Case

7. The Respondent opposed the application by filing a replying affidavit and grounds of opposition dated May 26, 2023.
8. The Respondent averred that the orders sought in the application are premature for the reason that costs arising from the alleged decree are yet to be agreed on or taxed and there is no justification of how the decretal amount was arrived at.
9. The Respondent avers that this claim is pending full hearing and determination by this court and the orders sought to be executed arising out of an application dated September 21, 2020 and not the main claim.
10. The Respondent avers that in response to the memorandum of claim dated December 8, 2020, the Respondent's position is that majority of the listed employees in the Claimant's list of members were released from employment on redundancy and their dues settled and union fees had already



been remitted to a different union Kenya Building, Construction, Timber and Furniture Industries Employees Union (KBCTFIEU) and has produced evidence to that effect.

11. The Respondent avers that the nature of orders issued by the court on October 6, 2020 were final in nature and were issued at an interlocutory stage thus the Respondent ought to have been heard first before issuance of the said orders.
12. The Respondent avers that there is a pending application for stay of execution pending at the court of appeal challenging the aforesaid orders by this court. Therefore, adopting the Claimant's tabulation and paving way for execution as sought will prejudice the Respondent's pending appeal and subsequent intended appeal.
13. The Respondent avers that there are unresolved issues in this claim which can only be resolved upon full hearing of the suit and allowing the application will bring this matter to a premature end.

Analysis and Determination

14. The Respondent opposed the application that there is a pending appeal praying for stay of execution pending at the court of appeal challenging the aforesaid orders by this court dated October 19, 2020 and notice of appeal dated October 15, 2020. However, the Claimant aver it has never been served any appeal or directions from the appellate court save for the notice of intended appeal dated October 15, 2020.
15. Order 42, rule 6, sub rule 1 of the *Civil Procedure Rules* states:

“No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.”
16. In view of the foregoing, if aggrieved by the order issued in October 6, 2020, the Respondent should have applied for stay of execution of the said orders at the appellate court and/or setting aside of this court's orders.
17. The respondent has not attempted to demonstrate efforts made to have the memorandum of appeal dated October 19, 2020 set down for hearing.
18. This court holds the Claimant/Applicant's case is merited.
19. The upshot of the foregoing therefore is that the orders given on October 6, 2020 have never been stayed or reviewed and the subsequent orders issued on March 24, 2022 have also been ignored and or disobeyed.
20. Flowing from the above the court finds the matters raised by the respondent in his replying affidavit of May 26, 2023 as pertains to the fact that they have been remitting the dues of members to another union among others should have been handled in their entirety at the Court of Appeal. Under the circumstances, it is evident the orders given by the court on the respective dates herein before cited are unchallenged and must be obeyed.



21. The court holds the prayers by the claimant/applicant vide their notice of motion dated May 9, 2023 are merited and are therefore granted as prayed.
22. Costs have not been prayed so court orders costs to be in the cause.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 18TH DAY OF OCTOBER, 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

