



**Transport Worker Union v Rift Petroleum Limited (Cause
415 of 2013) [2022] KEELRC 1206 (KLR) (31 May 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1206 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE 415 OF 2013
HS WASILWA, J
MAY 31, 2022**

BETWEEN

TRASPORT WORKER UNION CLAIMANT

AND

RIFT PETROLEUM LIMITED RESPONDENT

RULING

1. This Ruling emanated from the decision of this court (Justice Byram Ongaya) in the judgment delivered on the March 14, 2014 where the court ordered the respondent to implement the Regulations of wages (General) (Amendments) Order, 2012 namely paying 13% general increment on wages of the Claimant's members in the respondent's employment from the Period of May 1, 2012 to April 30, 2013 being a period of 12 months.
2. In order to execute the orders of the court, the claimant, through it branch secretary Mr. Simon Beru Imoli prepared a tabulation of the dues payable to each claimant and sought for the Adoption by this court in the application dated November 30, 2015 referred to as Tabulation of claim.
3. The court delivered its ruling with regard to this application on the February 22, 2016 and referred the dispute to the County labour officer in Uasin Gishu to compute the dues owing to the employees in terms of the Judgement delivered by Ongaya J on March 14, 2014.
4. After several mentions before this court, and summons issued to the labour officer to explain why they had not complied with the court orders, Uasin Gishu County Labour officer, Mr. C Chemursoi, filed the salary computation for the employees, indicating whether they were underpaid or overpaid, on the December 7, 2012.
5. The parties were then directed to submit with regards to this tabulations.



Claimants' Submissions.

6. The claimant submitted that the labour officer in his computation prepared salary variations to indicate overpayment or underpayment of only 31 employees when the claimant had brought this claim with regard to 71 employees therefore that the computation done are not in tandem with the orders of the court of February 22, 2016.
7. On whether this report should be adopted by the court, it was submitted that, it was submitted that the same ought not be adopted because the report did not capture all claimant's members in the tabulation rather that the labour officer calculated the dues as per the alleged list given to it by the respondent who did not participate in the hearing and or opposed the claim during trial.
8. It was further submitted that the report is now indicating that some of the claimant's members were underpaid contrary to the finding of the court that found all claimant's members to have been underpaid and the 13% increment applied to all of them.
9. The claimant then prepared its tabulation and urged this court to adopt the same as it rejects the tabulation by the labour officer.

Respondent's Submissions.

10. The respondent submitted in agreement with the tabulation by the labour officer and argued that during the year 2012 to 2013, it had only 31 employees being 1 general clerk, 19 petrol attendants, 1 turn boy, 3 managers and 1 director, therefore the allegation that the respondent had 71 employees is without any basis.
11. It was argued that the Claimant has mixed up the list of employee to include those whose issues were determined in causes 398 & 399 of 2013 and cause number 395 & 396 of 2015.
12. The Respondent then urged this Court to adopt the tabulation by the labour officer as it's a reflection of the true employees and their dues.
13. I have considered the submissions of the parties with regard to this application. By an order of this court in cause 415/2013 dated 14/3/2014 J. Ongaya entered Judgment for the claimant against the respondent. the claimant herein was Transport Workers Union.
14. The court ordered the respondent to implement Reg. of wages (General) (Amendment) order 2012 namely paying 13% general increment on wages of the claimant's members in the respondent's employment for the period 1/05/2012 to April 30, 2013 being a period of 12 months.
15. The respondents were to pay the claimant's members in respondent's employment at the material period dues in order 1 above by 1/5/2014 in default interest at court rates was to be payable from the date of the suit (November 28, 2013) till the date of full payment.
16. Vide a Ruling of this court (J. Ongaya) dated May 30, 2014, the respondents sought an order for stay of execution of the court's orders which was dismissed. Vide a decree of this court (J. Radido) dated 7/3/2016, this court order the County Labour Officer to compute dues owing to the employees in terms of the Judgment of Ongaya J on 14/3/2014.
17. The County Labour Officer only filed a report in this court on 6/12/21 after a lot of compulsion including summons and notice to show cause. it is this report that the claimant dispute and respondent agrees with the report.



18. The claimant aver the report of the Labour officer includes only 31 employees when the claim was for 71 employees. The respondents aver that in 2012 to 2013 the claimant had only 31 employees and not 71.
19. In order to determine what the number of employees were at the time, the only recourse would be the master roll or pay roll which would indicate how many employees were in the payroll of the respondent. The pay roll was never submitted to court by either party. Whereas the respondent content that they had only 31 employees, production of the payroll would have made it easy for the court to establish the truth. Given that the respondents didn't produce the pay roll in court. It means that if it had been produced, it would have been to their detriment.
20. The claimant on their part attached check off forms signed by their members being APP 7. Under their document filed in court on 4/9/2014, the list of employees filed was for 23 drivers, 8 plant operations, 9 artisans and 9 general artisans.
21. The total here is 49 only. It is in respect of this list that I find it is established were in the employ of the respondent them and for which I enter Judgment for:-
23 drivers – 811,356/=
8 plant operators – 456,372/=
9 artisans – 207,504/=
9 general artisans – 194,400/=
TOTAL – 1,669,632/=
22. That would be the executable amount in respect of this Judgment.
23. Costs to the claimant.

RULING DELIVERED VIRTUALLY THIS 31ST DAY OF MAY, 2022.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:-

Khaemba for Respondents – present

No appearance for applicants

Court Assistant – Fred

