



**Kenya Union of Road Contractors and Civil Engineering Workers v Mwenda Construction Limited (Cause E319 of 2022) [2022] KEELRC 1137 (KLR) (23 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1137 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E319 OF 2022**

**SC RUTTO, J**

**JUNE 23, 2022**

**BETWEEN**

**KENYA UNION OF ROAD CONTRACTORS AND CIVIL ENGINEERING WORKERS ..... APPLICANT**

**AND**

**MWENDA CONSTRUCTION LIMITED ..... RESPONDENT**

**RULING**

1. The Applicant which is a trade union suing on behalf of its members, who are employees of the Respondent, has moved this Court vide a Notice of Motion Application dated 16<sup>th</sup> May, 2022. The motion Application is supported by the Affidavit of Charles Osicho, who describes himself as the National General Secretary of the Applicant.
2. The Application seeks the following main orders;
  - a) Spent.
  - b) That the Honourable Court be pleased to issue an Order compelling the Respondent to commence paying employees their statutory minimum rates of wages pending the hearing and determination of this Application.
  - c. That the cost of this Application be provided.
3. The Application is premised on grounds that: -
  - a) the Respondent has deliberately refused to pay statutory minimum rates of wages and therefore breaching the law and denying the workers their rightful entitlement.



- b) the Claimant reported the dispute to the Cabinet Secretary Labour who appointed the conciliator whose efforts were frustrated by the Respondent by failing to attend conciliation meetings thereby issuing a report to this Court for further arbitration.
  - c) the Respondent refusal to pay statutory minimum might create dissatisfaction and contribute to unnecessary industrial action and strike.
  - d) no prejudice shall be suffered by the Respondent shall the Orders sought be granted.
4. The Respondent did not file any response to the Application despite being served. As such, the Application was not opposed.
  5. The Applicant filed skeleton submissions in support of the Application and stated that the Respondent's employees are entitled to the statutory minimum rate of wages. The Applicant relied on the case of *Nicholas Juma Ojuok vs pentagon Elite Services Limited* (2018) eKLR and the provisions section 41 of the *Employment Act* and section 48 (2) of the *Labour Relations Act*.
  6. The Applicant argues that the Respondent has refused to pay its workers statutory minimum wage and its efforts to have the matter resolved through conciliation has yielded no result.
  7. The matter was referred for conciliation through a letter dated 14<sup>th</sup> February, 2022. Evidently, the matter was not resolved hence the instant Application.
  8. As stated herein, the Respondent did not tender any response to the Application hence the Applicant's assertion that its employees are paid wages below the statutory minimum, was not controverted.
  9. The prayers sought by the Applicant in the Application are in the form of a mandatory injunction as it seeks to compel the Respondent to pay its employees the statutory minimum rate of wages.
  10. In the case of *Kenya Breweries Ltd & Another vs Washington O. Okeya* [2002] eKLR, the Court of Appeal addressed itself to the grant of mandatory injunctions as follows: -
 

“A mandatory injunction ought not to be granted on an interlocutory application in the absence or special circumstances, and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory interlocutory injunction, the court had to feel a higher degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction.”
  11. Further, in the case of *Nation Media Group & 2 Others vs John Harun Mwau* [2014] eKLR, the Court of Appeal determined as follows: -
 

“It is trite law that for an interlocutory mandatory injunction to issue, an applicant must demonstrate existence of special circumstances...A different standard higher than that in prohibitory injunction is required before an interlocutory mandatory injunction is granted. Besides existence of exceptional and special circumstances must be demonstrate as we have stated a temporary injunction can only be granted in exceptional and in the clearest of cases.”
  12. Section 48 of the *Labour Institutions Act* provides that the rate of remuneration and conditions provided by a certain wages order are the utmost minimum an employer can offer an employee.



13. In this regard, an employer who fails to comply with the provisions of a Wage Order commits an offence and the Court, on finding the employer guilty, may impose penalties in addition to requiring the payment of the difference between the amount that ought to have been paid and that which was paid.
14. Further, the *International Labour Organization's Minimum Wage Fixing Convention, 1970* (No. 131), which was ratified by Kenya on 9<sup>th</sup> April 1979 provides as follows: -
  - “ 1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate.
  2. The competent authority in each country shall, in agreement or after full consultation with the representative organisations of employers and workers concerned, where such exist, determine the groups of wage earners to be covered.”
15. It is therefore evident that payment of minimum wage, is a right on the part of an employee and a legal obligation on the part of an employer. This is among the cornerstones of the right to fair labour parties. Paying an employee wages below the minimum wage potentially exposes an employee to unfair labour practices. Needless to say, the Respondent is therefore under a legal obligation to comply with the stipulated legal requirements.
16. In light of the foregoing, I am satisfied that the Applicant has demonstrated that there exist special and exceptional circumstances that warrant the granting of the orders of mandatory injunction at this stage.
17. As stated herein, the Respondent did not file any Response to the Application either to dispute the assertions of the Applicant hence the allegations made by the Applicant have neither been controverted nor denied.
18. The upshot of the foregoing is that I find that the Application is merited and this is a clear case that warrant grant of orders in the nature of a mandatory injunction.
19. The Application dated May 16, 2022, is hereby allowed in the following terms: -
  - a) The Respondent is hereby compelled to commence paying employees their statutory minimum rates of wages.
  - b) Costs shall be in the Cause.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23<sup>RD</sup> DAY OF JUNE, 2022.**

.....

**STELLA RUTTO**

**JUDGE**

**Appearance:**

**Mr. Osicho for the Petitioner/Applicant**

**No appearance by the Respondent**

**Court Assistant Barille Sora**



## **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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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 had 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 Civil 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.

**STELLA RUTTO**

**JUDGE**

