



REPUBLIC OF KENYA



KENYA LAW
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**Igonyi & 66 others v Ogembo Tea Factory Ltd (Cause
286 of 2016) [2022] KEELRC 84 (KLR) (8 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 84 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 286 OF 2016**

S RADIDO, J

JUNE 8, 2022

BETWEEN

ALFRED OGINGA IGONYI 1ST CLAIMANT
ARATI OMWANGE 2ND CLAIMANT
BONFACE OBIERO 3RD CLAIMANT
CLEMENT AYIENDA 4TH CLAIMANT
DAVID MOSOBA 5TH CLAIMANT
DISMAS OMWOYO 6TH CLAIMANT
EVANS ORANGI 7TH CLAIMANT
FRANCIS KEBWAGE 8TH CLAIMANT
GRACE NYABOKE 9TH CLAIMANT
HANDSON OGANGA 10TH CLAIMANT
HELLEN OYUNGE 11TH CLAIMANT
HENRY OMBOGO 12TH CLAIMANT
IBRAHIM ONDARA 13TH CLAIMANT
ISAC OSORO 14TH CLAIMANT
JAMES ONYAMBU 15TH CLAIMANT
JAMES SIBWOGA 16TH CLAIMANT
JENEPHER NYABERI 17TH CLAIMANT
JANET ORINA 18TH CLAIMANT
JERUSA ONCHARI 19TH CLAIMANT



JOWL MOCHUMA OKERO	20 TH CLAIMANT
JOEL NYAKORA	21 ST CLAIMANT
JOHN BONGOYE	22 ND CLAIMANT
JOHN NYABOGA	23 RD CLAIMANT
JOSEPH ONDARI	24 TH CLAIMANT
JOSEPHINE NYAMORI	25 TH CLAIMANT
LUCY BARONGO	26 TH CLAIMANT
MARCELLA MACHOMA	27 TH CLAIMANT
NATHAN OSORO	28 TH CLAIMANT
PETER OKWENDA	29 TH CLAIMANT
RICHARD OBONYO	30 TH CLAIMANT
RICHARD TANI	31 ST CLAIMANT
SIMION OYONGO	32 ND CLAIMANT
SIMON MOKAYA	33 RD CLAIMANT
ZIPORAH MATUNDRA	34 TH CLAIMANT
JANE NYAMBANE	35 TH CLAIMANT
AMOS MAGEMBE	36 TH CLAIMANT
ELIZABETH MORAA	37 TH CLAIMANT
DOMNIC ONYUOKI	38 TH CLAIMANT
EVALINE OSEKO	39 TH CLAIMANT
IBRAHIM NYAMGARESI	40 TH CLAIMANT
JULIANA ORINA	41 ST CLAIMANT
RHODA KWAMBOKA	42 ND CLAIMANT
SELINA NYABONYI	43 RD CLAIMANT
MESHACK KEINDA ONDARI	44 TH CLAIMANT
NEMWEL OGECHI	45 TH CLAIMANT
JAMES NYABWANGA	46 TH CLAIMANT
RAEL OTWEKA	47 TH CLAIMANT
LABAN NYANDEGE	48 TH CLAIMANT
NELSON MOGENI	49 TH CLAIMANT
HANNINGTON MARUBE AKUNA	50 TH CLAIMANT
MISHAEL OMWENO	51 ST CLAIMANT



PENINA OSEKO	52 ND CLAIMANT
DISHON MAKORI	53 RD CLAIMANT
GLADYS MIRUKA	54 TH CLAIMANT
JOSEPH MOMANYI	55 TH CLAIMANT
JOYCE KEREBI	56 TH CLAIMANT
MARGARET ORINA	57 TH CLAIMANT
MARY MAOBE	58 TH CLAIMANT
MARY MAYAKA	59 TH CLAIMANT
ONDIEKI NYANDIRI	60 TH CLAIMANT
ELIJAH KERONGO	61 ST CLAIMANT
ONCHWERI OYARO	62 ND CLAIMANT
HESBON ONCHARI	63 RD CLAIMANT
NATHAN ONYANGO	64 TH CLAIMANT
SAMSON MOSONGO	65 TH CLAIMANT
HEZRON MOTARO ONWONG'A	66 TH CLAIMANT
HEZRON MOTARO ONWONG'A	67 TH CLAIMANT

AND

OGEMBO TEA FACTORY LTD	RESPONDENT
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RULING

1. For determination is a Motion dated 1 March 2022 by Ogembo Tea Factory Ltd (the Respondent) seeking orders:
 - (a) ...
 - (b) ...
 - (c) ...
 - (d) ...
 - (e) This suit and resultant judgment be deemed to have been fully adjusted, compromised and or settled wholly.
 - (f) The proclamation on the applicant's properties be lifted ex debito justitiae and the Claimants do bear the auctioneers charges.
 - (g) The Claimants to be deemed to have forgone any costs payable to them pursuant to the decree herein.
 - (h) Costs of the application be borne by the Plaintiffs.



2. The Respondent set out about 10 grounds in support of the application and the main grounds were that after retrenchment, it paid the Claimants Kshs 15,314,176/20 before they filed the suit; that after filing the suit, a consent was entered into upon which a further Kshs 4,181,720/- was paid to the Claimants fully settling the suit; that the Claimants had not sent a draft decree for the Respondent's approval before execution and that costs had not been assessed before the execution and therefore the costs should stand forfeited.
3. The Claimants caused a replying affidavit sworn by the 1st Claimant to be filed on 15 March 2022.
4. The 1st Claimant deponed that the application was fatally defective; the consent order for payment of Kshs 4,181,720/- was in respect of terminal benefits and not salary and house allowance arrears which were the subject of the decree sought to be executed; that on 9 July 2029, the Court delivered a Ruling requiring the parties to compute and agree on the salary and house allowance arrears but the Respondent declined or failed to file the computations and thus the Claimants filed their computations; that the Claimants had accepted an offer which had been made by the Respondent on 14 August 2008 to settle the heads of claim for salary and house allowance arrears; that under the *Employment and Labour Relations Court (Procedure) Rules, 2016*, there was no requirement to send a draft decree to a Respondent for approval; that a decree could be executed before assessment of costs and that the application was an attempt to challenge the judgment of 9 July 2019.
5. When the parties appeared in Court on 28 April 2022, the Court directed the parties to file and exchange submissions within set timelines. The Respondent's submissions were not on record within the set timeline while the Claimants filed their submissions on 25 May 2022.
6. During the appearance, the Court also extended the injunctive orders which had been issued ex-parte on 1 March 2022, on condition that the Respondent deposited in Court the sum of Kshs 18,672,251/- on or before 1 April 2022.
7. The Court has considered the Motion, affidavits and submissions and come to the conclusion that the Motion is without any merit, is vexatious and should be dismissed for the following reasons.
8. One, the Court imposed a condition upon the Respondent on the deposit of the decretal amount in Court, but it neglected to comply with the same. No explanation has been offered for the non-compliance.
9. Two, the question of full settlement had already been determined by the Court and rejected on the merits in its judgment delivered on 9 July 2019.
10. For the benefit of the Respondent, the Court will cite the appropriate paragraphs in the judgment:
 1. On 22 October 2010, a consent judgment of Kshs 4,181,720 was entered into in favour of the Plaintiffs being terminal benefits arrears which amount has already been paid.
 2. A further consent on salary and house allowance arrears was recorded on 4th November 2011, when the Claimants were paid a balance of the terminal benefits due to the remaining Plaintiffs of Kshs 265,349.00 together with accrued interest of Kshs 157,885.55 making it total payment of Kshs 423,331.59.
 3. The said consents were based on CBA for the year 2001 – 2002.
 4. The issue in dispute is whether there were further payments of arrear salary and house allowances based on subsequent CBAs for the period 2003 – 2004 and 2005 – 2006. These were signed on 3rd August 2006 and were registered on 10th August 2006.



5. Were these two CBAs in place at the time of retrenchment and if not could their terms apply to the retrenches retroactively for the years 2003 to 2006?
....
8. Whereas the Claimants argue that the subsequent CBAs though not registered at the time of retrenchment are applicable to them. The Respondent argue to the contrary and prays the Court to find that the claims by the Claimants were fully settled and no further claims are subsequently permissible.....
15. Accordingly, the Court finds on the facts of this case and the law applicable that the CBAs for the period 2003 – 2004 and 2005 – 2006 cover the 67 Claimants from the date each document became effective up to and including 30th June 2006 when the Claimants were retrenched notwithstanding that the two documents were subsequently signed on 3rd August 2006 and registered on 10th August 2006.
16. The Claimants and the Respondents to file computation of arrear salary and allowances accordingly. The Claimant to file within 14 days of this judgment and the Respondent to file within 14 days of service for final confirmation by the Court....
11. In furtherance to the judgment, the Claimants filed their computations on 9 August 2019.
12. The Respondent never complied with the order to file its computations within 14 days of service.
13. When the Cause was mentioned in Court on 25 May 2021, to confirm compliance with the order to file computations, the Respondent urged the Court to allow it to engage with the Claimants.
14. The Court allowed the request and directed the joint computations be filed.
15. The Respondent did not engage with the Claimants and the Claimants. During one of the appearances, the Claimants informed the Court that they were ready to accept the direct offer made to them by the Respondent through its letter of 14 August 2019.
16. The Court gave the Respondent time to file its computations but again, the order was not complied with.
17. Seeing the intransigent conduct of the Respondent, the Court informed the parties on 18 November 2021 that it would study the file and give a Ruling, which it did on 23 February 2022.
18. The above background leaves no doubt in the mind of the Court that the Respondent had been afforded two opportunities to demonstrate that the Cause had been fully settled before trial, first during the hearing on the merits and to file computations after the judgment.
19. The instant application is this an illustration of a litigant which is not properly guided by its advocate on record, or which is hellbent on using all avenues possible to stall the Claimants from enjoying the fruits of judgment.
20. It is instructive that the Respondent filed an appeal against the judgment before the Court of Appeal, but did not bother to follow it up.
21. Third, in the Court's view, the mere fact that the Claimants did not send a draft decree to the Respondent for approval by itself though being an irregularity, does not render the sealed decree fatally defective such that an execution would be deemed unlawful. Under the Employment and Labour Relations Court (Procedure) Rules, 2016, there is no requirement for exchange of a draft decree before



it is sealed by the Registrar. The duty to prepare and issue a decree is left to the discretion of the Registrar.

22. Lastly, execution before assessment of costs and without leave is an irregularity. The irregularity, can, however, be salvaged by denying the successful party costs.

23. The Motion dated 1 March 2022 is dismissed with further costs to the Claimants.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 8TH DAY OF JUNE 2022.

RADIDO STEPHEN, MCIARB

Judge

Appearances

For Claimants Ondabu & Co. Advocates

For Respondent Nyachiro Nyagaka & Co. Advocates

Court Assistant Chrispo Aura

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