



**Public Transport Operators Union " PUTON" v Kagwi (Cause E344 of 2022) [2022] KEELRC 3978 (KLR) (26 September 2022) (Ruling)**

Neutral citation: [2022] KEELRC 3978 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E344 OF 2022  
JK GAKERI, J  
SEPTEMBER 26, 2022**

**BETWEEN  
PUBLIC TRANSPORT OPERATORS UNION " PUTON" ..... CLAIMANT  
AND  
EVANS WALTER KAGWI ..... RESPONDENT**

**RULING**

1. By a notice of motion application dated May 24, 2022, the claimant/applicant seeks orders that;
  - i. Spent.
  - ii. An order do issue to compel the respondent herein to pay the terminal benefits of the grievant so that he may obtain urgent medical treatment he requires following the complication he had developed due to motorcycle two (2) accidents he was involved in.
  - iii. The costs of this application be provided for.
2. The application filed under certificate of urgency is expressed under Article 22(2) and 47(1) and (2) of the [Constitution of Kenya, 2010](#) , section 73(1) of the [Labour Relations Act , 2007](#), section 87 of the [Employment Act, 2007](#), section 12(3) of the [Employment and Labour Relations Court Act , 2011](#), Cap 234B, 2014, rule 17 and 28 (2) (a) of the [Employment and Labour Relations Court \(Procedure\) Rules, 2016](#) and other enabling provisions of law.
3. The application is based on the grounds therein outlined and is supported by the supporting affidavit of Fenus Okonji, the Secretary General of the applicant union who depones that;
  - i. The respondent underpaid the grievant throughout his employment as a building caretaker and did not respond to a demand letter dated August 2, 2019 which demanded salary underpayment, service and annual leave.



- ii. The affidavit states that the Ministry of Labour accepted the dispute and appointed one Phylis Iminza as conciliator but the respondent did not honour her invitation and as a consequence, the conciliator issued a certificate of unresolved dispute paving way for the current suit.
4. On May 26, 2022, the suit came before Ndolo J who certified the same as urgent, directed service upon the respondent and fixed a date for inter partes hearing before any judge.
5. There is no affidavit of service on record.
6. However, on June 2, 2022, counsel for the respondent, Mr Wamwayi applied for 14 days to respond to the application and was accorded 14 days.
7. The claimant was also accorded 14 days for a response, if necessary, and mention was slated for July 6, 2022 on which date the respondent's counsel was absent and a ruling date was scheduled for September 26, 2022.
8. By the August 5, 2022 when the court retired to write this ruling, none of the parties had filed submissions.

### **Determination**

9. The only issue for determination is whether the application herein is merited.
10. According to the statement of claim dated May 24, 2022, the grievant, Mr Mathew K Sejero was employed by the respondent on January 5, 2001 as a caretaker of residential Flat House No M44 located at Dandora Phase V at Kshs 5,000/= per month, which later rose to Kshs 7,000/= per month in 2014 and to Kshs 8,000/= by the date of termination. He avers that he was a diligent employee until the respondent unfairly terminated his employment on May 3, 2019.
11. The claimant prays for salary underpayment, annual leave for 4 years, service pay for 19 years and compensation for unlawful termination; a total of Kshs 2,868,826.80.
12. Noteworthy, this suit has neither been certified ready for hearing nor as undefended.
13. Finally and needless to emphasize, none of the provisions relied upon by the applicant/claimant nor the authorities attached confer upon the applicant/claimant authority to apply for summary judgement in the manner it has done in the instant case.
14. Perhaps the best the applicant/claimant could do is to seek a mention date before the Deputy Registrar for the requisite pre-trial directions and thereafter apply for the suit to be certified as undefended if the respondent will not have complied with the pre-trial directions or such other orders as the Deputy Registrar may issue. The suit may thereafter be scheduled for formal proof.
15. For the foregoing reasons, the notice of motion application dated May 24, 2022 is unmerited and is accordingly dismissed with no orders as to costs.
16. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 26<sup>TH</sup> DAY OF SEPTEMBER 2022**

**DR. JACOB GAKERI**

**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 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 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 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.

**DR. JACOB GAKERI**

**JUDGE**

