



**Obonyo & 50 others v Kenya Engineering Workers Union (Miscellaneous Application 132 of 2018) [2022] KEELRC 14659 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 14659 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS APPLICATION 132 OF 2018**

**M MBARŪ, J  
OCTOBER 27, 2022**

**BETWEEN**

**JOHN OBONYO & 50 OTHERS ..... APPLICANT**

**AND**

**KENYA ENGINEERING WORKERS UNION ..... RESPONDENT**

**RULING**

- 1 The claimants filed application dated August 29, 2022 seeking for orders that
  1. Spent.
  2. Spent.
  3. The Secretary General for the respondent Wycliffe Amakombo Nyamwatta do show cause why he should not be committed to civil jail for contempt of court;
  4. Warrants of arrest do issue against Wycliffe Amakombo Nyamwatta and he be committed to civil jail for contempt.
  5. The respondent's bank account number Act xxxx be frozen;
  6. The respondent be ordered to release forthwith to the Advocates for the applicant the sum of Ksh 19, 181,867.84 together with interests of 12% from the date of payment from July 30, 2018 until the full amount is settled.
  7. The respondent be ordered to account for any payments made and submit proof of the payment to the applicants.
  8. Costs of the application.



- 2 The application is supported by the affidavit of John Denis Obonyo and on the grounds that the claimants are former employees of Nalin Nail Works Limited who were awarded Ksh 18, 012,032.85 on July 30, 2018 and which as deposited with the respondents in bank account Number xxxxx and a further amount of Ksh 1, 169,835 in costs of the suit. The respondent was then directed by the court to pay the claimants but the respondents has refused to comply 5 years later and the claimants have lost faith in the respondent's ability to pay.
- 3 Some claimants are elderly and have visited the respondent for payment without success and only fair that the secretary general be compelled to comply through committal to civil jail.
- 4 The respondent replied to the application and filed the Replying Affidavit of Wycliffe Nyamwatta the general secretary and who avers that the application is in abuse of court process as John Denis Obonyo has no written authority to act for the claimants and he has not disclosed the identities of the persons he seeks to represent herein.
- 5 Since delivery of judgement on June 11, 2019 the claimants have filed several applications on the same subject supported by John Obonyo and Christopher Topi after changing advocates and they have become vexatious litigants and should be stopped by the court. The claimants have already been directed by the court to report with their national identity cards at the offices of the respondent to be paid their dues without success.
- 6 On February 11, 2021 the claimants filed appellation seeking that the decretal sum be released to them which application was dismissed by the court.
- 7 The claimants changed advocates and filed application dated May 11, 2021 on the same grounds and which was dismissed by the court.
- 8 The claimants obtained a Notice to Show Cause against the respondent on the same grounds through a different firm of advocates.
- 9 The respondent has diligently communicated to the claimants to attend at its offices to collect their funds but only 7 attended being;
  1. Moses Ndukuru Mwangi
  2. Edward Ayoma Ouko,
  3. Robet Kamile Makau,
  4. George Wambugu,
  5. Benson Kitaa Muli,
  6. Henry Anyango Ajuok, and
  7. Peter Amungui Shem.
- 10 The above were paid their dues in the year 2019.
- 11 The claimant changed advocates and made fresh demands and on April 12, 2022 9 claims visited the respondent's offices together with John Obonyo and Christopher Tobi who have already been paid their dues but persist in making vexatious apparitions with the knowledge of the orders of the court and should now be barred from abusing the court process and filing the same application and causing the respondent unnecessary expenses to defend the same.
- 12 The parties attended and made oral submissions.



- 13 The claimants are seeking that the respondent union secretary general be summoned and committed to civil jail for alleged contempt of court on the grounds that he has refused and failed to comply with the court orders in terms of paying the claimants the judgement sum herein.
- 14 As correctly submitted by the respondent, this is not the first time the claimants and particular John Denis Obonyo is/are in court with regard to execution of the court judgement delivered on May 30, 2018.
- 15 In a ruling of the court delivered on June 11, 2019 the respondent was directed to pay the claimants their dues in a transparent manner.
- 16 On February 25, 2021 the claimants filed application seeking among other orders that the respondent should pay their dues and upon consideration of the same, the court directed the claimants to attend at the respondent offices and be paid their dues subject to production of the national identity card.
- 17 From the Replying Affidavit of Mr Nyamwatta dated September 26, 2022 it is clear to the court that several claimants have attended at the respondent's offices and have been paid their dues including Mr John Denis Obonyo who has supported the instant application seeking that the respondent's secretary general be committed to civil jail for failing to pay the claimants their dues.
- 18 The respondent has attached a schedule of all the claimants and their entitlements. There is no matter that any claimants has attended before the respondent and there is refusal to pay.
- 19 An application seeking to commit a person to civil jail should only arise in the rarest of cases where there is non-compliance with orders of the court. Such non-compliance should be demonstrated by the deliberate and wilful disobedience by the cited party. It is not an every-day application when a party feels the urge to threaten or intimidate the order.
- 20 John Denis Obonyo has already been paid his dues. He has no list indicating the claimants who have been paid and those who have not. The constant applications seeking to get hold of the funds held by the respondent for undefined claimants is now clear to the court. This habit is simply in abuse of the court process and litigation should end at the point that each claimant should on their own accord attend at the respondent's offices and be paid their dues subject to production of an identity card.
- 21 The court finds no matter of contempt necessary to commit Wycliffe Nyamwatta to civil jail or issue the orders sought by the claimants as supported by John Denis Obonyo.
- 22 Under the *Vexatious Proceedings Act*, the court is directed to deal firmly with vexatious litigants. where the Court is satisfied that the person has habitually and persistently and without any reasonable ground instituted vexatious proceedings against the same person or against different persons, the Court may, after hearing that person or giving him an opportunity of being heard, make an order declaring such person to be a vexatious litigant.
- 23 In these proceedings, on the instant application, John Denis Obonyo is such person as described under the *Vexatious Proceedings Act* save before the Order thereof issues, a warning in costs shall issue.
- 24 For good order, the respondent has the list of the 51 claimants claiming herein. Several have since been paid. The claimant shall issue notices to all claimants who are not paid through their last known addresses and give provisions for 30 days and allow a further 30 days within which time the claimants shall present themselves at the offices for payment of their dues. At the end of such notice, the duty shall be upon each claimant to attend and be paid upon a 14 days' notice to the respondent.



25 Accordingly, application dated August 29, 2022 is found without merit and is hereby dismissed and following orders issued;

1. John Denis Obonyo shall meet the costs due to the respondent/Trade Union for this application all at ksh 50, 000 and to be paid before filing any other application herein.
2. The orders herein shall be prominently placed in the file for the Deputy Registrar and for any other Judge attending to take note.
3. The respondent shall issue a 30 days' notice to the claimants to attend at their offices for payment of their dues and file a copy of such Notice with the court.
4. The respondent shall allow a 30 days period for the claimants to attend.
5. At the lapse of (3) and (4) above, the claimants shall attend at own time upon a 14 day notice to the respondent.

**DELIVERED IN COURT AT NAIROBI THIS 27<sup>TH</sup> DAY OF OCTOBER, 2022.**

**M. MBARŪ JUDGE**

In the presence of:

Court Assistant: Okodoi

..... and .....

