



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 2324 OF 2017

(Before Hon. Lady Justice Maureen Onyango)

KENYA SHIPPING, CLEARING AND WAREHOUSES WORKERS UNION.....CLAIMANT

VERSUS

SUNRIPE (1976) LIMITED.....RESPONDENT

AND

AGUNDA OTIENO CALEB AND OTHERS.....APPLICANTS

RULING 2

Judgment in this suit was delivered on 17th August 2018 as follows:-

“I enter judgment in favour of the claimant union and order the respondent to pay terminal dues to the 103 employees who are the subject of this dispute. The parties are directed to come up with the amount payable in line with payments made to the 71 employees and report back to court with 30 days.

Payments will be made directly to employees and not through the union.

The respondent will pay the claimant union costs in the sum of Kshs.50,000 to cover reasonable expenses and disbursements.”

Parties were however unable to agree on the amount payable and by a ruling delivered on 26th July 2019 pursuant to an application dated 7th December 2018 filed by the claimant, the court granted the following orders –

“The parties having failed to agree as per judgment of the court the court directs that the employees be paid as follows –

- 1. One month’s salary in lieu of notice as provided in Section 40(1)(f) of the Employment Act for all employees including those on temporary/seasonal employment contracts.***
- 2. Pay in lieu of annual leave capped at three (3) years for all employees including those on temporary/seasonal employment contracts.***
- 3. Ex-gratia pay at one (1) month’s salary.***

Should parties disagree on the figures they will go to the Labour Officer who will assist them to tabulate the same.

The parties thereafter met at the Labour Office under the Chairmanship of Grace Mweresa, the Conciliator and agreed on payments due to each of the affected employees. The parties also agreed that the employees be paid in batches.

It is the Union’s averment that the Respondent only paid Kshs.1,323,965/- out of a total of Kshs.6,401,298/-.

In the application dated 5th October 2020 the claimant seeks the following orders –

1. *This Application be certified urgent, e-service be dispensed with, and the same be heard exparte in the first instance.*
2. *This Honourable Court be pleased issue an Order adopting the Schedule covering 103 former employees' terminal benefits tabulations, as annexed herein, and marked " Sched-1".*
3. *An Order to issue and is hereby issued, directing the Respondent to pay each Grievant whose employment term was, "Seasonal Contract", KSHS.60,950.00 as full and final terminal benefits.*
4. *An Order to issue and is hereby issued, directing the Respondent to immediately release all the terminal benefits under this Judgment, being KSHS.6,401,298.00, and pay grievants (all former employees), as full and tabulated terminal benefits forthwith.*
5. *Any other Order(s) the Honourable Court may deem fit to grant for the ends of justice to meet.*
6. *The costs and incidentals of this application be met by the Respondent.*

The application is premised on grounds that the Respondent has refused, neglected, ignored and/or abandoned her obligations to fully implement the court's decision.

In the supporting affidavit of JAMES TONGI, the General Secretary of the claimant Union, he reiterates the averments on the face of the application.

The Respondent filed a replying affidavit of CHRIS KALUKU, its Human Resource Manager in which he states that following the delivery of the judgment and ruling in this case the claimant sent copies thereof to the Labour office and the parties were called for meetings by letters dated 25th October 2019 and 12th February 2020. That the Labour Officer/Conciliator assisted the parties in coming up with the tabulation and thereafter the parties agreed on mode of payment.

Mr. Kaluku deposes that sometime in March 2020 a list of 48 out of 103 former employees agreed to their claim as tabulated while the parties agreed to continue with talks with respect to the rest of the former employees. That instead of waiting for agreement on all the former employees and their entitlement the Respondent requested to settle the claims in batches, which request was accepted by the claimant and the Labour Officer. That payments were made on 11th June, 3rd July, 13th August, 27th August and 11th September as per discharge certificates annexed to his affidavit.

Mr. Kaluku deposes that the Respondent was forced to suspend payments following a demand letter received from the firm of Eyase Kanyuira and Associates Advocates on behalf of the grievants, and this application, but it is now ready to resume payments. He further explained that the reason for payment in batches was the COVID-19 pandemic and the mitigating measures it had to put in place as explained in its letter to the Labour Officer/Conciliator annexed as Exhibit CK5 to the Replying affidavit which include market lock downs, flight cancellation and airport closures, shortage of produce and recent floods all of which impacted on its operations and finances. It called for patience for the Applicant to enable it make necessary arrangements to settle the claim in batches as previously agreed.

In the submissions filed by the parties they reiterated the averments in the affidavits.

Analysis and Determination

Having considered the application, the affidavits in support and in opposition thereof and the submissions, the issue for determination is whether the applicant's prayers are merited.

The averment of the Applicant that the Respondent has refused or neglected to pay the decretal sum is not supported by the evidence before the court. There is evidence that parties agreed on payment in batches which the Respondent had commenced at the time of filing of the application. Indeed the Applicant admits that a sum of Kshs.1,303,965/- had already been paid.

Further, what the applicant is asking the court to do is to execute the decree before the decree has been drawn. Even the decretal sum has not been agreed upon as it is under discussion before the Labour Officer as directed by the court. The Respondent has clearly demonstrated reasons why it stopped payments in batches as agreed and has stated it is willing to resume the same.

I find no merit in the application by the Applicant which is also premature and dismiss the same. I further direct that the Respondent continues making payments in batches as originally agreed by the parties. The same should continue under the supervision of Grace Mweresa, Labour Officer/Conciliator as before who will submit a report to court once all the grievants have been paid.

There shall be no orders for costs.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 29th DAY OF JANUARY 2021

MAUREEN ONYANGO

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 15th March 2020 and subsequent directions of 21st 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.

MAUREEN ONYANGO

JUDGE