



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

CAUSE NO 152 OF 2012

KENYA ENGINEERING WORKERS UNION.....CLAIMANT

VS

KENYA MARINE CONTRACTORS (EPZ) LIMITED.....RESPONDENT

RULING

1. By a judgment delivered on 23rd May 2014, the Court (**Radido J**) awarded employees of the Respondent, who were members of the Claimant Union, 11% wage increase, effective 1st August 2012 and another 11% wage increase, effective 1st August 2013. According to the judgment, the other terms and conditions as presented for determination would be in accordance with the statutory minimums.
2. The Court further directed the parties to sign a Collective Bargaining Agreement (CBA), in the terms stated in the judgment, within 30 days.
3. The Claimant's application now before the Court has to do with implementation of that judgment.
4. The application is dated 16th October 2017 and seeks an order summoning the Respondent's Director, Simon Philip to appear in court to show cause why contempt proceedings should not be preferred against him.
5. The application is supported by an affidavit sworn by the Claimant's General Secretary, Charles Natili Wekesa and is based on the following grounds:
 - a) That the Court delivered judgment on 23rd May 2014, directing the parties to sign a CBA within 30 days, awarding 11% general wage increase from 1st August 2012 and another 11% wage increase effective 1st August 2013;
 - b) That the Respondent, having been dissatisfied with the judgment of the Court, filed *Appeal No 28 of 2015*, which appeal was declined in a judgment delivered on 27th November 2015;
 - c) That the Claimant had tried severally to execute the orders of the Court in vain;
 - d) That if the order sought is not granted, the Claimant and its members shall suffer irreparable damage.
6. The Respondent's response to the application is by way of a replying affidavit sworn by its Administration Manager, Nuru Hamed on 23rd November 2020.
7. Hamed depones that in an application dated 24th July 2019, the Claimant had, through an affidavit sworn by Wycliffe Amakombo Nyamwatta, indicated that its claim was for a total sum of Kshs. 21,791,396 and that it had claimed the sum of Kshs. 10,000,000 held as security by I & M Bank.
8. Hamed further depones that while the case was going on, the Respondent had continued to pay the Claimant's members' salaries as set at the time.
9. Hamed therefore concludes that what the Claimant's members are entitled to is the difference between the court award and what they had already been paid while the case was going on.
10. Hamed states that the Claimant's members are entitled to the sum of Kshs. 9,130,412.56 (after tax).

11. Hamed points out that the Claimant had already liquidated the sum of Kshs, 10,000,000 being the sum guaranteed by the Respondent as security for costs, with respect to the Respondent's appeal.

12. Hamed goes on to state that the Claimant owes the Respondent the sum of Kshs. 869,587.44, being the balance from the liquidated sum of Kshs. 10,000,000, after satisfaction of the court award.

13. The application was urged by way of written submissions.

14. I have had occasion to read the submissions filed by both parties and what emerges is that the real issue has to do with tabulation of the award contained in the judgment of this Court delivered on 23rd May 2014.

15. It has emerged that the Claimant liquidated the sum of Kshs. 10,000,000 held as security for the Respondent's appeal, towards satisfaction of the award. It is therefore not true that the award has not been satisfied at all. The issue is how much the Claimant's members were entitled to under the award. Such an issue cannot be determined in an application for summons against the Respondent's Director.

16. The Claimant states that the entire award has not been satisfied and the Respondent claims that the Claimant's members were overpaid and even goes ahead to claim the sum of Kshs. 869,587.44 from the Claimant. The divergent positions held by the parties are based on matters of fact which cannot be determined in a single prayer application such as the present one.

17. While the Claimant may well have a valid grievance, it needs to make up its mind what the real issues are. As it is, the application before the Court seeks a specific order but the affidavits in support and the submissions thereon present all manner of issues, which cannot be determined in the application before the Court.

18. For the foregoing reasons, the Claimant's application dated 16th October 2017 is disallowed.

19. Each party will bear their own costs.

20. Orders accordingly.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 22ND DAY OF APRIL 2021

LINNET NDOLO

JUDGE

ORDER

In view of restrictions in physical court operations occasioned by the COVID-19 Pandemic, this ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of court fees.

LINNET NDOLO

JUDGE

Appearance:

Mr. Makale for the Claimant

Mr. Asige for the Respondent