



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 40 OF 2020

TAILORS AND TEXTILES WORKERS UNION.....CLAIMANT

VERSUS

UNITED ARYAN (EPZ) LIMITED.....RESPONDENT

RULING

1. In the notice of motion application filed on 28th July, 2021, the applicant prays for orders:-

1. Spent

2. **THAT** this Honourable Court be pleased to find and hold that the Respondent herein United Aryan EPZ Limited has disobeyed and/or refused to comply with the Court orders issued on the 19th of May, 2021 by failing to increase and adjust the unionisable employees' salaries in line with the wages general order L.N. No. 2 of 2019 effective from the 1st of May, 2018.

3. **THAT** the respondent's Chief Executive Officer /Managing Director to be subsequently committed to Civil Jail for a period not exceeding 6 months pending the compliance with the Honourable Court's order.

4. **THAT** this Honourable Court be pleased to deny the respondent audience in this matter until and unless they purge the contempt of Court committed herein.

5. **THAT** the Respondent be ordered to pay for the costs of this Application.

2. The application is based on grounds set out on the face of the Notice of Motion and in the supporting affidavit of **Rev. Joel Kandie Chebii** the National General Secretary of the applicant union the gravamen of which is that the Court issued judgment in favour of the applicant on 19th May, 2021 directing the respondent to effect Regulation of General Wages Order published on the 1st January, 2019 with effect from 1st May, 2018.

3. That despite service of the Court order, the respondent has failed and/or neglected to implement the same. That the respondent be found guilty of willful disobedience of the Court Order and be punished accordingly.

4. The applicant states that service was made on the Managing Director of the respondent on 6th June, 2021 and the order was accompanied by a letter from the applicant's advocates to the Managing Director requesting them to comply with the Court Order but have ignored to do so. The said letter is attached to the application.

5. The respondent filed a replying affidavit sworn to by Mr. **Amit Bedi**, the Managing Director of the respondent who admits that he is aware of the judgment delivered by the Court on 19/5/2021 in which **the** respondent was directed to effect the General Wage Order from 1st May, 2018.

6. The respondent states that they filed a notice of Appeal dated 20th May, 2021 and requested for typed proceedings. That the respondent also filed a notice of motion application in the Court of Appeal seeking stay of execution of the judgment pending appeal.

7. That the application was certified urgent by the Court of Appeal and the applicant was served and has filed a replying affidavit to the application at the Court of appeal and same is pending to be heard and determined by the Court of Appeal.

8. That the applicant has deliberately failed to disclose these material facts to the Court and therefore ought not to be granted the orders sought.

9. That in any event, the order of the Court require computation of the arrears owed to the employees of the respondent having already been partly paid in terms of the Wage Order with effect from 1st January, 2019.

10. That the respondent and the applicant have engaged in correspondence on the issue of computation and again the applicant failed to disclose this fact to the Court. That the Court grants the parties time to conclude the process of reconciliation of arrears due to the employees since this process is involving and takes time. That the application lacks merit and it be dismissed with costs.

11. The parties made oral submissions before Court.

12. The Court has considered the depositions by the parties and the submissions thereof and is satisfied that the applicant has not demonstrated that the respondent is in willful defiance of the Court order. The applicant failed to disclose material facts in the application regarding the steps thus far taken by the parties to reconcile the arrears payable to the employees. Furthermore, the applicant did not disclose that there is an application pending before the Court of Appeal in which the respondent prays for stay of execution of the judgment of the trial Court pending appeal.

13. The Court is aware that noting of an appeal by itself does not lead to automatic stay of execution, however, this was material information that the applicant ought to have disclosed.

14. Accordingly, the applicant has failed to prove that the respondent is guilty of willful disregard of the Court order in a matter where the respondent remains the employer of the beneficiaries of the Court order.

15. The application lacks merit and is dismissed with costs.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 9TH DAY OF DECEMBER, 2021

MATHEWS N. NDUMA

JUDGE

Appearances

M/s Guserwa for Applicant

Mr. Weru for Respondent

Ekale – Court Assistant