



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 370(N) OF 2009

(Before Hon. Lady Justice Maureen Onyango)

UNION OF NATIONAL RESEARCH AND

ALLIED INSTITUTES STAFF OF KENYA (UNRISK).....CLAIMANT

VERSUS

KENYA INDUSTRIAL RESEARCH AND

DEVELOPMENT INSTITUTE (KIRDI)..... RESPONDENT

RULING

Vide its application dated 31st July 2019 and filed on 1st August 2019, the applicant seeks the following orders –

- 1. That, the Honourable Judge pronounce Kshs.2,841,372.00 being the total judgment amount as per the benefits awarded in the judgment of the court delivered on 13th March, 2015, plus interest at the rate of 26% from the date of judgment until settlement in full and, be and is hereby released to the claimant to pay the twelve (12) trade dispute suit grievants named in the grounds here for.*
- 2. That, the respondent be and is hereby ordered to release to the claimant/applicant Kshs.50,000.00 costs awarded in the judgment delivered on 13th March 2015, plus interest at the rate of 26% from the date of judgment until settlement in full.*
- 3. That, the court be pleased to pronounce the amount of costs of this application against the respondent.*
- 4. That, the court be pleased to order the respondent to satisfy orders 1, 2, and 3 within thirty (30) days from the date of the ruling.*
- 5. That, the court be pleased to order that, in the respondent's default with order 4, the claimant/applicant be at liberty to institute execution proceedings for orders 1, 2 and 3.*

The application is supported by the grounds on the face thereof and the supporting affidavit of Zachariah Achacha.

The respondent opposes the application and filed a replying affidavit of MR. JAIRUS OMBUI, its Human Resource Manager.

The application was disposed of by way of written submissions.

The background of this application is that this suit was filed by the applicant, a trade union, on behalf of its 52 members whose employment had been terminated by the respondent. In the judgment delivered on 13th May 2015, the court awarded the following: -

“I therefore order that the grievants be paid as follows:-

- i. 3 months' basic salary as severance pay.*
- ii. 3 months' basic salary in lieu of notice.*

In view of the length of service of the grievants, I order that each of them be paid compensation of 3 months' basic salary."

It would appear from the pleadings that 40 of the grievants were paid as per award of the court but the 12 whose names are set out in the last page of the motion were not paid. They are the following –

1. *Otonde Clemento*
2. *Musembi Richard*
3. *Nyambane R. Bitutu*
4. *Kigen Bob Paul*
5. *Omwoyo Knight*
6. *Ndungu Stella*
7. *Otieno A. William*
8. *Kaudia R. Ochieng'*
9. *Muange Simon M.*
10. *Mbiwa Nickodemus*
11. *Owino Calvince*
12. *Kirui Kelvin*

It is the award in respect of these 12 that the applicant seeks in the instant application, together with interest at court rates. The applicant further seeks payment of its costs of Kshs.50,000 as awarded together with interest at 26% p.a.

For the respondent it is contended that the application is *res judicata*, as a similar application was filed by the applicant dated 17th July 2017 and filed in court on 21st July 2017. It is further the respondent's position that the 12 grievants that are the subject of this application were reinstated and are not eligible for payment of any compensation as alleged by the applicant.

In their written submissions, the parties reiterated their positions in the pleadings. I have considered the application and the grounds in support thereof. There are three issues for determination. Whether or not the 12 grievants who were "*reinstated*" are entitled to benefit from the award of this court and secondly, whether the claimant who was not paid costs awarded by the court in the judgment until 15th October 2019, is entitled to interest on the same, as well as on the unpaid terminal dues of the 12 employees who were not paid. The third issue is whether the application is *res judicata*.

I will deal with the claimant's fees first. It is not denied by the respondent that the same was not paid until 15th October 2019 as is reflected in the documents attached to the applicant's submissions. The applicant states that 5 years from the time of the award to the time of payment is an inordinately long period. The respondent's position is that no interest was awarded in the judgment and that there is no justification for interest at 26% p.a. as prayed by the applicant.

I agree that the applicant has not justified the demand for payment of interest at 26% p.a. I however agree with the applicant that the delay of almost 5 years in the payment of the fees is indeed inordinate delay. The respondent has not given any justification for the delay in payment of the said sum which was awarded for reasonable expenses incurred by the applicant union in the prosecution of the case. The inordinate delay is tantamount to the abuse of the court's leniency in not awarding interest. It is for this reason that I agree with the applicant that the unexplained, unapologetic and inordinate delay cannot go unremedied by this court which is a court of justice.

It is for these reasons that I award the applicant interest at 14% from date of award to the date of payment, that is from 13th March 2015 to 15th October 2019.

On the issue of the 12 employees whom the respondent avers are not entitled to payment of the award of the court, no application has been made to court to vary the judgment which was specific that all the grievants be paid.

Further I agree with the submission of the applicant at paragraph 9.01(d) that the respondent, who avers that the 12 grievants were reinstated, has failed to provide any proof of the same to the court and it is not clear whether they were re-engaged or reinstated. Reinstatement means that they are deemed to have been in service without a break, and thus paid for the period they were out of employment. I doubt that this is what the respondent did as that would be more expensive than what the court awarded.

For this reason, the prayer by the applicants succeed. I direct that the respondent releases the payment due to all the 12 grievants to the applicant as prayed. The same will attract interest at 14% per annum from date of judgment being 13th March 2015 to the date the money is

released to the applicant. Should the respondent fail to pay within 30 days the applicant is free to execute.

The respondent pleaded that the application herein is *res judicata* as the applicant had filed an earlier application dated 17th July 2017, in which the prayers were similar to the instant application. The said application sought the following orders –

1. That, the unrebutted revised quantum of the claimant/applicant's computation following the order in the judgment delivered on 13th day of March 2015, served upon the respondent on 28th June, 2017, be and is hereby adopted for a decree for execution purposes.
2. that, the honourable registrar draw and issue the decree to the claimant/applicant for the quantum meruit total of Kshs.10,796,687.00 payable to the grievants as listed in the revised computation.
3. That, the respondent pay the total amount with compound interest at the rate of 26% as from 15th July 2009, the commencement date of this suit by notice of motion.
4. That the respondent pay the claimant/applicant, Kshs.50,000.00 costs with compound interest at the rate of 26% as from the date of the judgment, that is from 13th March 2015, plus costs of this application.

It is apparent from the prayers in the said application that apart from seeking payment of interest at 26%, the prayers in the two applications are markedly different. The earlier application was on computation of the award as had been ordered in the judgment while the present application is for payment of the 12 grievants whom the respondent admits that it did not pay as per award. I thus find that the instant application is not *res judicata*.

In the end I make the following orders –

1. That the respondent shall pay to the applicant interest on fees ordered by the court at the rate of 14% p.a. from date of judgment being 13th March 2015 to date payment being 15th October 2019.
2. The respondent pays the 12 grievants as awarded by the court and the same to attract interest at court rates from date of judgment to date of payment in full.
3. In default of payment within 30 days from date of this ruling, the applicant is at liberty to execute.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 15TH DAY OF MAY 2020

MAUREEN ONYANGO

JUDGE

ORDER

In view of the declaration of measures restricting court of 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