

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO. 179 OF 2018

KENYA UNION OF DOMESTIC, HOTELS,

EDUCATIONAL INSTITUTIONS & HOSPITAL WORKERS.....CLAIMANT

VERSUS

JATOMY ENTERPRISES LIMITED.....RESPONDENT

RULING

1. The Application before me is the Claimant's notice of motion application filed on 23rd June 2020. In it, the Claimant sought that the Court does find that its orders of 4th November 2019 are still pending implementation and/or execution by the Respondent. The Claimant asserts that the Grievant has not paid any dues by the Respondent and that the Court do order the Respondent to serve calculations as per the Conciliators recommendations within 7 days from the date of hearing the application. Additionally, the Claimant sought that the Court does find that the Claimant's calculations filed on 22nd November 2019 amounting to Kshs. 313,453/- as the correct calculations.

2. The Respondent was opposed and filed grounds of opposition to the effect that this court is *functus officio* as the Court in its judgment delivered on 4th November 2019, directed the Respondent to implement the conciliator's report by filing a tabulation and proof of payment. The Respondent asserts that it complied by presenting a cheque for Kshs. 28,814/- to the Embu Labour Office, being payment of the Claimant's dues and thereafter filing a tabulation in court on 18th November 2019 together with a letter from the Embu Labour Office acknowledging receipt of the cheque. The Respondent asserts that it complied with the court's judgment and any grievance the Claimant has with the tabulation goes to the root of the dispute which this Court already heard and determined. The Respondent asserts that if this Honourable Court were to determine a dispute relating to the tabulations, this would be tantamount to the Court reopening a case which already has been determined and it would also be tantamount to this Honourable Court sitting on appeal over its own judgment. The Respondent asserts that any such dispute ought to be determined by the Appellate Court and that further, the judgment only directed the Respondent to file a tabulation of the terminal benefits and not both parties. The Respondent asserts that the Claimant was under no obligation to file their tabulations so the prayer seeking adoption of their tabulations is misconceived.

3. The parties were to file submissions and only the Claimant filed submissions as at the time the Ruling was being prepared. In its submissions, the Claimant submitted that the Application was as a result of the Judgment of this Honourable Court which was delivered on 4th November 2019 which ordered the Respondent to furnish the Grievant with a cheque for the dues the grievant was entitled to per the conciliation process being the payment of leave 3 years, payment of public holiday 3 years, underpayment for 3 years and overtime for 12 months and that the Court further ordered that a computation of the dues to be filed within fourteen days together with a proof of payment as required. The Claimant submitted that it filed their Computation on 14th November 2019 and served the Respondent. The Claimant submitted that the matter was mentioned on 5th December 2019 and the Respondent had not filed anything before the Honourable Court and they sought 14 days to file their calculations. The Claimant submitted that the Honourable Court granted the Respondent 14 days to file and serve their computation and again the matter was listed for mention on 20th January 2020 for confirmation and that on 20th January 2020 there was no computation filed by the Respondent and the grievant was still not paid as earlier directed by the Court. That all what the Respondent had filed is a letter from Embu Labour Office indicating that the Labour Officer had received a cheque of Kshs. 28,000/- but the letter had no name of the Labour Officer who purported to have received the cheque and that the Claimant was not served with the said letter but we learnt of the letter during the mention on 20th January 2020. The Claimant submitted that the Respondent did not file the computation as the Honourable Court had directed in the Judgment and therefore the matter is still pending. The Claimant submitted that it had tried to follow up with the Labour officer in Embu but no one in the office seems to be aware of the Cheque and according to the judgment the Respondent was to issue the Cheque to the Grievant. The

4. Its evident that the Court cannot reopen a matter concluded by it. However, before me is a peculiar situation where the Respondent asserts it complied with the Judgment and indicates that it deposited the cheque with the Embu Labour Office. The Judgment provided as follows:-

As the cheque is not good for payment any more the Respondent is to furnish the Grievant with a cheque for the dues the Grievant was entitled to per the conciliation process being the payment of leave – 3 years, public holidays – 3 years, underpayment for 3 years and overtime for 12 months. A computation of the dues to be filed within 14 days together with proof of payment as required.

5. The material before me discloses that the Respondent has not complied with the Judgment as the Judgment of 4th November 2019 was very explicit. As a consequence, the Claimant is at liberty to act within the confines of the law on execution. As the motion is partly successful costs on the lower scale will be awarded to the Claimant.

It is so ordered.

Dated and delivered at Nyeri this 30th day of September 2020

Nzioki wa Makau

JUDGE