



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**MISCELLANEOUS APPLICATION NO. 132 OF 2018**

(Before Hon. Lady Justice Hellen S. Wasilwa on 11<sup>th</sup> June, 2019)

**JOHN OBONYO & 50 OTHERS.....CLAIMANT**

**-VERSUS-**

**KENYA ENGINEERING WORKERS UNION....RESPONDENT**

**RULING**

1. The Application before the Court is dated 30.10.2018 brought under Section 13 of the Employment and Labour Relations Court Act, 2011, Section 1A & 1B of the Civil Procedure Act, Order 51 Rule 1 of the Civil Procedure Rules and all enabling provisions of the law where the Applicant seeks for orders:-

*1. That the Application be certified as urgent and service thereof be dispensed with in the 1<sup>st</sup> instance.*

*2. That the Respondent be and is hereby ordered to deposit in a joint interest accruing account as between itself and Advocates for the Applicants the Decretal sum of Kshs. 18,012,038/= together with interest thereon.*

*3. That the Decretal sum be thereby remitted to the beneficiaries thereto jointly by the Respondent and the Advocates for the Applicants.*

*4. That the costs of this Application be awarded to the Applicant.*

2. The Application is premised on the grounds that:

*1. By a Ruling of this Honourable Court delivered on 30<sup>th</sup> May, 2018 and the ensuing Final Decree thereof issued on 27<sup>th</sup> June, 2018, in ELRC Cause No. 79 of 2002; Kenya Engineering Workers Union Vs Nalin Nailworks Limited, Judgment was entered against the said Nalin Nailworks Limited for a sum of Kshs. 18,012,038.84/=.*

*2. Nalin Nail Networks Limited has since made a payment in favour of the Respondent in full settlement of the Decretal sum.*

*3. However, the Respondent has failed, refused and/or neglected to remit to the beneficiaries of the Decretal sum (hereinafter "the beneficiaries) their rightful dues.*

*4. That there is no valid reason for withholding the Decretal sum as this Honourable Court had directed the mode of tabulation to be used in remitting the amounts to the beneficiaries.*

*5. While most of the beneficiaries are now old and continued withholding of their dues aggravates their suffering.*

*6. The Respondent has indicated to the beneficiaries its intention to disburse to them unreasonably low amounts without substantiation of how they arrive at the amounts contrary to the tabulation mode ordered by the Court.*

*7. The beneficiaries are now apprehensive that unless a swift and urgent measure is taken, the Respondent may waste the Decretal Sum held by it, subjecting them to another long and painful process of recovering their dues.*

**8. It is therefore just, equitable and in the interests of justice that the Application herein be allowed as prayed.**

3. The Application is supported by the Affidavit of John Obonyo who reiterates the grounds on the face of the application and filed a Supplementary Affidavit to show the amounts paid to the Applicants by the Respondent as a result of the judgment.
4. Another Supporting Affidavit sworn by Hudson Ngaira Wasagala wherein he avers that the Respondent paid him Kshs. 200,000 and made him sign for Kshs. 226,000/= claiming that the union was deducting 10% of the amount.
5. That his monthly basic pay was Kshs. 33,000/= hence his dues as per the Ruling of the Court was supposed to be Kshs. 1,023,000/= exclusive of leave due. He contends that the Respondent did not pay him his rightful dues as ordered by the Court.
6. That the Respondent lacked accountability in the payment of the Claimants' dues as he paid in cash as opposed to payment through cheques or bank transfers. For this reason, he states that the Applicants are apprehensive that the Respondent will waste their dues and subject them to another painful recovery process. He urges the Court to direct the Respondent to release a list of the Claimants already paid their dues and the tabulation thereof.
7. The Respondent deny that he said Hudson Ngaira Wasagala was their member and that he benefitted from any payments arising from the judgment in question.
8. The Respondent has filed a response to the application wherein they aver that after Judgment was confirmed by the Court on 30<sup>th</sup> May, 2018, they resorted to execution of the decree which they eventually succeeded in.
9. That the employees who were declared redundant were requested to come for their payments within the Rules of the Respondents and the Trade Unions Act/Labour Relations Act, 2007.
10. That some came and were paid after identifying themselves and they aver that the applicants are free to also go and collect their dues. That so far 22 employees have been paid their dues. Further, that some of the dues claimed are not payable as they were not provided for in the CBA and as such they urge that the application lacks merit and should be dismissed with costs.

**Submissions**

11. The Applicants submit that the Respondent has been trying to induce the Applicants to collect their dues offering them less amounts contrary to what is contained in the judgment and as such they seek Court's intervention and seek for accountability in how the decretal sum has been dispensed. They urge the Court to allow the application.
12. The Respondents submit that no valid reason has been given to warrant the order of depositing the decretal amount in a joint interest earning account between the Respondent and the advocates for the Claimant. That the orders sought are granted in a dispute where parties are involved in an appeal situation and one party gives security. They urge the Court to dismiss the application with costs.
13. I have considered the averments of both parties. The contention here is the lack of transparency in the disbursement of the Applicants' dues following a judgement by this Court.
14. In this Court's view, the Judgement listed what was payable for the Applicants as per the tabulations presented before Court. The Respondents should therefore adhere to the said tabulations in a transparent manner.
15. The Applicants had sought an order to have the decretal sum deposited in an interest earning account. I do not see any need for this given that the moneys should be disbursed immediately to their beneficiaries.
16. I therefore order that the moneys due to the Applicants be disbursed forthwith in a transparent manner preferably through cheque as per the Schedule presented in Court. In default execution to proceed.

**Dated and delivered in open Court this 11<sup>th</sup> day of June, 2019.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Mburu holding brief Waiganjo for Applicants – Present

Namasake for Respondent – Present