



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 2324 OF 2017**

*(Before Hon. Lady Justice Maureen Onyango)*

**KENYA SHIPPING, CLEARING AND**

**WAREHOUSES WORKERS UNION.....CLAIMANT**

**VERSUS**

**SUNRIPE (1976) LIMITED.....RESPONDENT**

**RULING**

This Court in its Judgment delivered on 17<sup>th</sup> August 2018 ordered the parties herein to agree on the amount payable to 103 of the Respondents employees who held been declared redundant and to report back to court within 30 days. The parties failed to agree on the list of the employees and the amount payable. Consequently, on 7<sup>th</sup> December 2018 the Applicant filed a Notice of Motion seeking the following orders:

1. Spent.

2. That the Judgment dated on 17<sup>th</sup> August 2018 be amended by deleting the sentence on page 9 “*inline with payments made to 71 employees*”.

The Application is supported by the Affidavit of James O. Tongi and is based on grounds that the parties failed to agree on the list and amount payable to 103 employees as directed in the judgment.

The court directed each party to file its tabulation on amount payable and thereafter they filed their respective submissions.

**Applicant’s Submissions**

The Applicant submitted that its calculation was based on the report dated 18<sup>th</sup> December 2018 filed in court on 19<sup>th</sup> December 2018 and Section 40 of the Employment Act in compliance with the Judgment. It submitted that the Respondent failed to understand the Judgment.

The Respondent, on its part, submitted that the Claimant’s list is defective as it contained major errors including duplicated names, names of employees who were still employed by the Respondent and those who voluntarily left the employment.

It submitted that it had never been notified of unresolved issues as regards the 71 grievants and that it had submitted proof that the 71 grievants were paid in full as directed by the labour office.

**Determination**

In this court’s judgment delivered on 17<sup>th</sup> August 2018, the court found that the respondent had declared the affected employees redundant and ordered that payment be made to the 103 employees in line with payments made to the 71 employees who had been paid earlier by the respondent pursuant to the Labour Officer’s recommendations. The 71 employees were paid pursuant to the recommendations as follows –

**“Recommendation**

*In light of the findings above, I recommend that the affected employees be paid the following as a basis of mutual settlement in the spirit of ‘give and take.’*

*Ø One month's salary in lieu of notice of those employees who were on permanent terms of service and one week's notice*

*Ø Accrued leave subject to a maximum of three years.*

*Ø Ex-gratia payment. This payment to be agreed between management and union."*

The parties having failed to agree as per judgment of the court the court directs that the employees be paid as follows –

**1. One month's salary in lieu of notice as provided in Section 40(1)(f) of the Employment Act for all employees including those on temporary/seasonal employment contracts.**

**2. Pay in lieu of annual leave capped at three (3) years for all employees including those on temporary/seasonal employment contracts.**

**3. Ex-gratia pay at one (1) month's salary.**

Should parties disagree on the figures they will go to the Labour Officer who will assist them to tabulate the same.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 26<sup>TH</sup> DAY OF JULY 2019**

**MAUREEN ONYANGO**

**JUDGE**