



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 2 OF 2015

(Before Hon. Justice Mathews N. Nduma)

PETER WASUANI MAKUNDA.....1ST CLAIMANT
JAMES GITAU.....2ND CLAIMANT
PETER N. WASIKE.....3RD CLAIMANT
PHILIMONA NDEYA BARASA.....4TH CLAIMANT
EMMANUEL KATILA.....5TH CLAIMANT
MORGAN WASILWA WAFULA.....6TH CLAIMANT
GEOFREY MACHUKA MOGAKA.....7TH CLAIMANT
BENARD KUSIMBA.....8TH CLAIMANT
KAMADI ALEX KITING'A.....9TH CLAIMANT
LIVINGSTONE MISAU KILOSA.....10TH CLAIMANT
JOHN CHUMBEK.....11TH CLAIMANT
RAINI ONDARI.....12TH CLAIMANT
ANDREW KISI SONGWA.....13TH CLAIMANT
ALI NOOR ADEN.....14TH CLAIMANT

VERSUS

**JIANGIXI ZHOGNMEI ENGINEERING CONSTRUCTIONS
COMPANY LIMITED.....RESPONDENT**

RULING

1. Application dated 30th January 2019 was granted ex parte in terms of prayers two and three of the Notice of Motion.
2. The applicants now seek prayers four, five, six, seven and eight of the Notice of Motion.
3. The application is supported on grounds set out and numbered 1 to 15 in the notice of motion and supporting affidavit of Mr. Zou Changwei authorized officer of the respondent/applicant.

4. In the judgment by Maureen Onyango – J. dated 6th January 2018 and delivered by Nderi Nduma – J. on 5th June 2018, the court dismissed the claims for underpayments and lost hours but upheld the claim for annual leave in respect of Morgan Wasilwa Wafula, Peter Nangulwa Wasike, Andrew Kisi Songwa, Emmanuel Katila, Bernard Kusimba, John Chumek,, Geoffrey Machuka, Alex Kitinga and Philimona Barasa who were still in employment of the respondent/applicant as at July 2016. The court directed the respondent to “work out and pay them the leave due from date of recruitment to December 2014”
5. The court did not place a time frame on the computation and payment of the computed leave.
6. The respondent states that the claimants went ahead and computed the leave days and extracted a decree contrary to the directive of the trial court. The respondents depose that the claimants never gave them opportunity to comply with the court judgment by computing leave due and payable to the claimants.
7. In their replying affidavit sworn to by Robert Kundu Maliekhe an advocate in conduct of the matter for the respondents sworn to on 30th January 2019, the claimants/ respondents depose that the applicants are guilty of non-disclosure and the application lacks merit and it be dismissed.
8. The Advocate states that he wrote a letter to the applicant forwarding the judgment to the applicant and asking him to compute the leave due to the claimants. The letter is dated 7th December 2018 upon delivery of the judgment on 5th December 2018.
9. The Advocate deposes that after the lapse of one month and the respondent had not computed decretal amount, the claimant/respondent instituted execution of the “undisputed account in the judgment”
10. The advocate deposes that the respondent went ahead to issue a cheque of undisclosed amount to the claimant/respondent.
11. The respondent’s advocate states that stay orders issued were in respect of cause number 357 of 2014, which had been dismissed with no order to costs and there was nothing to be stayed therefore.
12. That execution was commenced in compliance with the law and the application be dismissed with costs.
13. Both parties filed written submissions on 18th March 2019 and 28th April 2018 respectively.

Determination

14. Upon a careful consideration of the application and the responses thereto, the court is satisfied the matter under consideration is E&LRC Civil Suit NO. 2 of 2015 and not cause number 357 of 2014.
15. The court is satisfied that in terms of the judgment delivered on 5th July 2018, it is the respondent/applicant who had been mandated by the court to compute and pay the claimants/respondents in respect of unpaid annual leave. It is also clear that the court did not provide a timeline within which the computation and payment was to be made.
16. The judgment did not open it to the claimant/respondent to compute the decretal sum in default by the respondent/applicant.
17. It is therefore beyond question that the only route that was available to the claimant/respondent if they felt the applicant had failed to compute the decretal sum timeously, was for the claimant/respondent to approach court for orders to be allowed to compute the decretal sum in default of the applicant doing so.
18. The claimant/respondent resorted to self-help and made unauthorized computation pursuant to which a decree was issued and attachment done.
19. The action by the claimant/respondent was contrary to the judgment of the court and was therefore irregular and unlawful.
20. The computation done by the claimant/respondent is therefore void and incapable of execution.
21. Accordingly, the application is granted and the following orders issued:
 - (a) The computation done by the claimant/respondent and the decree issued pursuant thereto is set aside.
 - (b) The proclamation and attachment is set aside.
 - (c) The Applicant to compute and file the decretal sum within 7 days of this ruling.
 - (d) The respondent to satisfy the decree within 60 days of this ruling failing which execution to follow in terms of computation by the claimant.

Ruling Dated, Signed and delivered this 4th day of November, 2019

Mathews N. Nduma

Judge

Appearances

Mr. Onsongo for Respondent/Applicant.

Mr. Situma for claimants/Respondents

Chrispo – Court Clerk