



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 79 OF 2002

(Consolidated with Petition No. 34 of 2012)

(Before Hon. Justice Hellen S. Wasilwa on 30th May, 2018)

KENYA ENGINEERING WORKERS UNION.....CLAIMANT

VERSUS

NALIN NAILS WORKS LIMITED (In receivership).....RESPONDENT

JUDGEMENT

1. This is a ruling made pursuant to this Court's judgement and subsequent ruling which directed the parties herein to tabulate their calculations in respect of benefits payable to the Claimant/Petitioner Applicant herein vide a Notice of Motion Application filed by the Applicants on 27/7/2017. The Applicants seek orders:

- a. That the Honourable court adopts the claimant's computation as regards terminal dues payable as per the award of 27th August 2004.**
- b. That the total claim as per the calculations be Kshs. 18,012,032.84.**
- c. That a directive be issued to the Deputy Registrar of this Honourable Court to issue a decree in light of prayer number 2 above.**
- d. That the respondent be condemned to pay costs of this application for its adamant nature to resolve this artless dispute.**
- e. That the Honourable Court do make any other such order deemed expedient in the circumstances of the case.**

2. This application is supported by the affidavit of one Charles Natili Wekesa and is premised on the grounds:-

- 1. That the judgement in this suit was entered on 27th August 2004 where an award was made in favor of the grievants in the suit who are members of the Claimant.**
- 2. That despite numerous appeals to the Respondent to settle the decretal sums the Respondent has been adamant in settling the same for no apparent reason.**
- 3. That the Claimant's members stand to suffer due to the continued withholding of the award by the Respondent for its argument that the Court's judgement of the 27th August 2004 lacks figures and as such is not specific.**

3. The Respondent filed their replying affidavit through Tom Okoth Ogola who deponed that by various financial securities, the Kenya Commercial Bank Limited advanced money to various companies which included Nalin Nail workers Limited which financial securities were secured by various debentures, where the various borrowers charged all their undertaking, goodwill, moveable and immovable property in favour of the debenture holder granting it a fixed and floating charge over the whole of the undertaking and assets of the companies.

4. He avers that following the default of the borrowers, the debenture holder appointed Receiver Managers on 21st September 1999 and the receiver process was finalized in December 2005. On 27th August 2004, the Industrial Court gave an award which set out in the Decree

issued on 27th August 2016 therefore the Receiver Managers finalized the receivership in April 2005 when the assets of the company were sold in April 2005 and distribution made to the preferential creditors and debenture holder.

5. He further avers that the Claimants are seeking the payment of the sum of Kshs.18,012,032.84 which sum includes Kshs.6,640,281.28 being items (a) to (c) in the decree and Kshs.11,371,751.56 being item (d) in the decree which they believe to be fair and just computation as set out being the sum of Kshs.6,640,281.28 given the fact that the company is no longer in existence and the receiver managers finalized their work in the year 2005.

6. In their further Affidavit, the Claimant aver that they agree with the replying affidavit of the Respondent and that Nalin Nail Works Limited Petition was dismissed and Decree of Honourable Court delivered on the 7th July 2015. That the Respondent agreed to make calculation to pay workers and based his calculation against the Collective Bargaining Agreement between parties. That therefore the Respondent should be ordered to calculate his calculation per registered Collective Bargaining Agreement not for his own Collective Bargaining Agreement, which is not registered. They hence ask the Court to order the Respondent to agree to make his calculation per Court award and per registered Collective Bargaining Agreement Collective Bargaining Agreement Collective Bargaining Agreement in Court.

7. I have considered the averments of both parties. The issue for this Court's determination is purely on calculation of decretal sum which the Hon. Judge Murtaza Jaffer in his judgement of 29th August 2004 failed to include but indicated in the judgment parameters to guide the computation of the figures.

8. The Applicants calculated their figures whose total amounts to 18,012,032.84.

9. The Respondents in their affidavit asked Court to compute the figures payable as 6,646,281.28 given that the company is non-existence and the Receiver Managers finalized their work in year 2005.

10. I have considered the respective submissions. The Respondent have not demonstrated how they arrived at the figure of 6,640,281 as the computed amount.

11. The Applicants on the other hand have set out how the figure of 18,012,038.84 was arrived. This Court's duty is not to redo the Court's judgment but to confirm it attaching figures to it.

12. In the circumstances, I do agree with the tabulations set out by the Applicants and enter judgement as per the said tabulation for Kshs.18,012,038.84 against the Respondents.

13. Costs to the Claimants/Applicants.

Dated and delivered in open Court this 30th day of May, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Parties