



**REPUBLIC OF KENYA**

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

**MISC NO.64 OF 2014**

**[Formerly MISC. 81 OF 2001]**

**KENYA UNION OF EMPLOYERS OF VOLUNTARY**

**AND CHARITABLE ORGANISATIONS (KUEVACO) ..... CLAIMANT**

**VERSUS**

**KENYA UNION OF THE BLIND .....RESPONDENT**

**RULING**

1.The Cause herein commenced through File No. 81 of 2001, this file got misplaced or could not be traced and through application and orders of the court on 12<sup>th</sup> November 2014, the file was reconstructed under this file being Misc.64 of 2014. By the reconstruction, the Claimant provided all the records that had been filed through File No.81 of 2001.

2.The Respondent herein though served failed to appear in court as noted in the court proceedings on 16<sup>th</sup> December 2014. The Respondent had been served through registered post vide Affidavit of Service sworn by Odin Boaz Otieno and dated 15<sup>th</sup> December 2014 indicate. The Claimant was then directed by the court to serve the respondents directed at their registered office which was done and Affidavit sworn by Alexander Alela Ochwo and dated 20<sup>th</sup> January 2015 indicates. I am therefore satisfied that the respondents are aware of the matter and have opted to attend and or address the case against them.

3.Through application dated 20<sup>th</sup> December 2012, the Claimant Notice of Motion brought under the provisions of section 13 of the Industrial Court Act is seeking that the quantum in the Chief Industrial Relations Officer letter dated 14<sup>th</sup> November 2003 be an hereby adopted as the decree of the Court and that under the decree, the grievants who were awarded various amounts all being a total of Kshs.767, 097.80 have a decree drawn by the Registrar in the following terms;

1. *Rugo-ini Wandistoni Kshs.76, 127.55*
2. *John Mukono Mwenje Kshs.107, 812.00*
3. *Bernadette Chongo Kshs.26, 289.65*
4. *Ibrahim Hilowe Adan Kshs. 114,880.35*
5. *Alex Ochola Osab Kshs. 48,881.25*
6. *Samuel Mulwa Kshs.183, 247.25*
7. *Francis Mwekulu Kanyanyu Kshs.114, 880.35*
8. *Salome Mandala Otoli Kshs.18, 368.30*

9. *Loise Muthoni Kihara* Kshs.49, 966.20  
10. *James Kimunyu Nzioki* Kshs.26, 644.00

4. The Claimant is also seeking for orders that the amounts owed to the grievants be paid with interest at court rates of 14% from the date of the award as from **6<sup>th</sup> November 2002**. This application is supported by the annexed affidavit of Odin Boaz Otieno and on the grounds that under the Trade Disputes Act, now repealed, the claimants registered a dispute and under section 15(2) of the Act, the Court through application of Industrial Court (Procedure) Rules, caused to be published **Legal Notice No. 186 of 1965** in the Kenya Gazette the Award of the Court as by law required. The court also directed the Industrial Relations Officer to work out the benefits and submit to the court which was done on 14<sup>th</sup> November 2003. The applicable law, the Trade Disputes Act, was repealed before the quantum and award of the court was gazetted. Section 13 of the Industrial Court Act, 2011 empowers the Court to enforce its awards.

5. Other grounds outlined by the Claimant in the application are that the Respondent has not filed any appeal against the award of the court and there is no review or challenge to the same at all. That in any event the time allowed for such measures has since lapsed. The application is therefore due for execution and within the time allowed.

6. The dispute herein arose out of termination and redundancy. The cause of action arose in 10<sup>th</sup> April 1986 and 1<sup>st</sup> December 1995 when the 1<sup>st</sup> grievant Rugo-ini Stoni was terminated and the other grievants declared redundant respectively. The applicable law then was the Trade Disputes Act, now repealed. The law required the Claimant as a union to register the dispute with the Minister and or register the dispute with the Court under the Trade Disputes Act [repealed] through the application of the Industrial Court (Procedure) Rules, now amended following the passing of the Industrial Court Act, 2011. Under the applicable law, the Trade Disputes Act, the Court once seized of a dispute and upon hearing the same, made an award. This award could only take effect upon it being gazetted by the Principal Judge. The court in this case heard and delivered an award on 6<sup>th</sup> November 2002 in favour of the claimant. The court also directed that the Chief Industrial Relations Officer to compute the award benefits and in a letter dated 14<sup>th</sup> November 2003 the same was submitted in court.

7. Section 15(2) of the Trade Disputes Act, now repealed, the Court through its application of Rule 19(2) Industrial Court (Procedure) Rules, was required to cause the publication through Gazette Notice of its award for the same to take effect. I find the court as then constituted, made an award and the same was published on **18<sup>th</sup> July 2008** vide **Gazette Notice No. 6512** with an outline of the issues before the court in Cause No. 81 of 2001 and the findings therein. The court also directed the CIRO (Chief Industrial Relations Officer) to work out the benefits awarded to the grievants where the 1<sup>st</sup> grievant would be paid his normal terminal benefits together with two months' salary by way of compensation for wrongful termination.

8. Having thus published the award as by law required, the Chief Industrial Relations Officer submitted his report on the benefits owed to the grievants through the cause filed by the claimants. I find the report of the Chief Industrial Relations Officer outline these benefits as;

Rugo-ini Wandistoni Kshs.76, 127.55

John Mukono Mwenje Kshs.107, 812.00

Bernadette Chongo Kshs.26, 289.65

Ibrahim Hilowe Adan Kshs. 114,880.35

Alex Ochola Osab Kshs. 48,881.25

Samuel Mulwa Kshs.183, 247.25

Francis Mwekulu Kanyanyu Kshs.114, 880.35

Salome Mandala Otoli Kshs.18, 368.30

Loise Muthoni Kihara Kshs.49, 966.20

James Kimunyu Nzioki Kshs.26, 644.00

9.The publication of the court award under Cause No. 81 of 2001, now substituted as noted above in this cause through orders dated 12<sup>th</sup> November 2014 was done on **18<sup>th</sup> July 2008**. The publication of the award as noted was under the provisions of the Trade Disputes Act, now repealed. In place and instead of the Trade Disputes Act that was repealed, now exist the Industrial Court Act, 2011 and its Rules of Procedure. The Industrial Court Act, 2011 that establish the Employment and Labour Relations Court [previously known as the Industrial Court], also gives power to the Court, a Superior Court of Record to arbitrate over disputes with regard to claims under the Labour Relations Act, the Employment Act, among others that ordinarily fell under the Trade Disputes Act as repealed. The Employment and the Labour Relations Court has an expanded mandate and jurisdiction unlike the Industrial Court that arbitrate disputes as under the Trade Disputes Act and its Rules thereto outlined with regard to section 38(1) of the Trade Disputes Act being the Industrial Court (Procedure) Rules, 1991.

10.The Industrial Court Act, 2011 came into force on **30<sup>th</sup> August 2011**. Effectively the award published with regard to the matter herein on **18<sup>th</sup> July 2008**. Once the Court published its award in the Kenya Gazette, the same became a valid judgement of the court that was subject to enforcement subject to any review, appeal or amendments that may be requested. Otherwise once the Court published the award and served the Minister with such an Award, the Trade Disputes Act, as repealed and its Rules thereto did not create time limits for enforcement. Therefore with the coming into force of the Industrial Court Act, 2011 where such an Award as under the Trade Disputes Act still remained not executed, under section 13 of the Act, the Court has the power to cause the same to be executed as under the Rules applicable.

11. I therefore find the application by the Claimant has merit and the Registrar shall issue a decree with regard to the Claimant for the sum of Kshs.767, 097.80. The claim for interest at court rates of 14% since **6<sup>th</sup> November 2002**, though outlined in the application by the claimant, there is no supporting averments in the application or in the affidavit of Odin Boaz Otieno as to why this particular interest rate is prayed for. I however note since 6<sup>th</sup> November 2002 when the court issued the award to the claimant, the respondents have not taken the initiative to settle the dues owed to the grievant. This is a period of over thirteen (13) years. However, the date the award was published is the date when the award took legal force for enforcement. The date of publication of the award is therefore the date the respondents were formally informed of the award despite the same having been delivered on 6<sup>th</sup> November 2002. Any interests that accrued from the principal sum ought to be based on this date of publication of the award being 18<sup>th</sup> July 2008. It is therefore appropriate, reasonable, fair and just that the owed dues be paid with interest at current court rates. I find merit and justification for the payment of such interest.

**In this regard therefore, on the basis that there is no appeal, review or any amendments application pending, I allow the application by the Claimant dated 12<sup>th</sup> December 2012.**

- a. **The Registrar shall within 14 days issue a decree to the Claimant, the Kenya Union of Employees of Voluntary and Charitable Organisations (KUEVACO), for the sum of Kshs.767,097.80 payable to:**
  - i. **Rugo-ini Wandistoni Kshs.76,127.55**
  - ii. **John Mukono Mwenje Kshs.107,812.00**
  - iii. **Bernadette Chongo Kshs.26,289.65**
  - iv. **Ibrahim Hilowe Adan Kshs. 114,880.35**
  - v. **Alex Ochola Osab Kshs. 48,881.25**
  - vi. **Samuel Mulwa Kshs.183,247.25**

- vii. Francis Mwekulu Kanyanyu Kshs.114,880.35
- viii. Salome Mandala Otolu Kshs.18,368.30
- ix. Loise Muthoni Kihara Kshs.49,966.20
- x. James Kimunyu Nzioki Kshs.26,644.00

b. Interest is hereby awarded on the award amounts as outlined above (a) which interest shall be based on current court rates from 18<sup>th</sup> July 2008 the date the Award was published vide Gazette Notice No. 615.

c. Costs of the application awarded to the Claimant.

**Delivered in open court and dated this 9<sup>th</sup> Day of February 2015.**

**M. Mbaru**

**JUDGE**

**In the presence of**

**Court Assistant:.....**

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