



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 415 OF 2013

TRANSPORT WORKERS UNIONCLAIMANT

- VERSUS -

RIFT PETROLEUM LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 30th May, 2014)

RULING

The court delivered the judgment in the cause on Friday, 14.03.2014 when judgment was entered for the claimant for:

1. **The respondent to implement the Regulation of Wages (General) (Amendment) Order, 2012 namely paying 13% general increment on wages of the claimant's members in the respondent's employment for the period 1.05.2012 to 30.04.2013 being a period of 12 months.**
2. **The respondent to pay the claimant's members in the respondent's employment at the material period the dues in order 1 above by 1.05.2014, in default, interest at court rates to be payable from the date of the suit (28.11.2013) till the date of full payment.**
3. **The respondent to pay costs of the suit.**

The respondent **Rift Petroleum Limited** filed on 02.04.2014, a notice of motion brought under section 20(1) of the Industrial Court Act, sections 1A, 3A and 63 (e) of the Civil Procedure Act, Order 10 Rule 3 and 11 of the Civil Procedure Rules, Article 159 of the Constitution and all other enabling provisions of the law. The applicant prayed for orders as follows:

- a. **There be a temporary stay of execution against the judgment delivered on 14.03.2014 and decree herein and all consequential orders and proceedings arising therefrom pending the hearing and determination of the application inter-parte.**
- b. **The hounourable court be pleased to set aside the ex-parte judgment obtained by the claimant herein as against the respondent and all consequential orders and proceedings arising therefrom and the respondent be awarded a chance to unconditionally defend the suit.**
- c. **The respondent is granted leave to file the defence out of time.**
- d. **The suit does proceed to full hearing on merit.**

e. Costs of the application be provided for.

The application was supported by the affidavit of Francis Osoro Ondera. To urge the application, it was stated for the applicant as follows:

- a. **The applicant and the claimant entered into an agreement on 14.12.2013, whereby the claimant was to withdraw all matters pending in court in respect of the parties and particularly the present suit.**
- b. **The claimant did not serve a mention notice.**
- c. **The respondent has been condemned unheard contrary to the rules of natural justice.**
- d. **The applicant has a good and arguable defence to the claimant's case.**
- e. **The respondent wished to defend the case, the application is made in good faith and the court should exercise its discretion to allow the application in the interest of justice.**

The claimant opposed the application and submitted that the applicant failed to settle the dispute even after the agreement to withdraw the suit was filed in court as a show of good faith on the part of the claimant. It was submitted that the court was informed of the parties' willingness to settle but the applicant did not settle per the agreement. The hearing notice was served and return of service filed but, it was submitted for the claimant, that the applicant failed to attend court. It was further submitted that the judgment notice was served and the claimant's Human Resource Officer attended court. Throughout the pre-trial and the hearing, the applicant acted in person and failed to comply with the due process of the court. It was concluded for the claimant that the judgment was just and the applicant was at liberty to appeal.

The court has considered the submissions. The court finds that there is no valid ground why the applicant failed to file a defence and to attend the hearing. There is sufficient evidence that at all material time, the applicant was aware of the suit and the hearing date but failed to take steps to put its case before the court. The relevant affidavits of service are on record and they have not been disputed. The applicant failed to perfect before the court the agreement that the suit be withdrawn and despite the claimant's taking steps to inform the court about the agreement about the parties' willingness to settle out of court. The court holds that where parties are willing to settle a suit by a compromise outside the court, the parties must proceed purposefully with clear involvement of the court but which the applicant failed to do in the present case. Instead, the applicant chose not to attend court.

The court further finds that the applicant has not placed any plausible defence against the claimant's case other than the empty averment that the applicant has a good and arguable defence to the claimant's case.

Accordingly, the court finds that the application was lacking in merits.

In conclusion, the application dated 1.04.2014 and filed on 02.04.2014 is dismissed with costs.

Signed, dated and delivered in court at Nakuru this Friday 30th May, 2014.

BYRAM ONGAYA

JUDGE