



Shikuku v Mini Bakers Nairobi Limited (Employment and Labour Relations Cause E060 of 2022) [2024] KEELRC 854 (KLR) (18 April 2024) (Judgment)

Neutral citation: [2024] KEELRC 854 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E060 OF 2022**

BOM MANANI, J

APRIL 18, 2024

BETWEEN

CRSPINUS SHIKUKU CLAIMANT

AND

MINI BAKERS NAIROBI LIMITED RESPONDENT

JUDGMENT

Background

1. The Claimant has filed this suit to enforce payment of Ksh. 441,449.00 being the balance of the award that was made to him by the Director of Occupational Safety and Health Services (the Director) following injuries that he sustained whilst in the service of the Respondent. In addition, he claims for a refund of Ksh. 37,097.00 which was allegedly wrongfully deducted from his salary. He also asks for medical insurance to cater for his accruing medical bills.
2. The court record shows that summons to enter appearance in the cause were delivered to the Respondent on 15th February 2022. Despite this, the Respondent has neither entered appearance nor filed a defense to the cause. As a result, judgment was entered in favour of the Claimant for the sum of Ksh. 441,449.00 being the balance awarded to him by the Director as indicated above. The rest of the claim was ordered to go to hearing through formal proof.
3. The Claimant testified on 7th March 2024. He adopted his witness statement and produced the documents attached to his list of documents dated 31st January 2022 as exhibits.
4. It was his case that the Respondent hired his services as an Oven Operator on 23rd March 2009. On or about 29th November 2018, he sustained injuries whilst on duty. As a consequence, he was rushed to hospital where he was treated.



5. The Claimant asserted that the injuries rendered it difficult for him to continue executing his work. As a result, he was forced to tender his resignation from employment.
6. It was his case that following the accident aforesaid, the matter was reported to the Director who assessed his compensation at Ksh. 1,341,660.00. Out of this amount, the Respondent paid Ksh. 900,211.00 leaving a balance of Ksh. 441,449.00. Efforts to have this balance settled have proved difficult.
7. The Claimant also averred that the Respondent made irregular and unexplained deductions from his salary for the months of January, February and April 2019 totaling Ksh. 37,097.00. It was his case that he took up the issue with the employer through his Trade Union but the matter was not resolved. And hence the prayer that the court orders the Respondent to reimburse this amount.
8. The Claimant further contended that after the suit accident, his health has continued to deteriorate. As a result, he is in need of frequent medical care which the Respondent should cater for.

Analysis

9. I have considered the evidence on record. I am satisfied that the parties had an employment relation. This fact is evidenced by the employment contract between them dated 23rd March 2009 which was tendered in evidence.
10. I have noted from the pay slips for the months of January, February and April 2019 which were tendered in evidence that indeed a total of Ksh. 37,097.00 was deducted from the Claimant's salary allegedly on account of absenteeism. However, the Respondent did not tender evidence to support the contention that the Claimant was indeed absent from duty without lawful and justifiable cause to warrant the deductions. As such, I find that the Respondent has not justified the impugned deduction.
11. Absent cogent justification for the deductions, the court arrives at the conclusion that they were unlawfully effected. Consequently, the Claimant is entitled to a refund of this amount. As such, I enter judgment for him (the Claimant) for the aforesaid sum of Ksh. 37,097.00.
12. The Claimant has claimed for medical insurance. However, he did not tender expert evidence to provide a financial projection of his medical needs. As such, if the court were to entertain the claim, it will be engaging in speculation in respect of it. This is not permissible. As such, this claim is rejected.

Determination

13. Consequently, I order as follows:-
 - a. Judgement is entered for the Claimant against the Respondent for the sum of Ksh. 37,097.00 to cover reimbursement for the amount that was irregularly deducted from his salary.
 - b. The court had already entered judgment in favour of the Claimant against the Respondent for the sum of Ksh. 441,449.00 being the balance that is due to him on account of the award by the Director.
 - c. The court declines to enter judgment for the Claimant for medical insurance cover.
 - d. The sums in a) and b) above attract interest at court rates from the date of institution of this case.
 - e. The Claimant is awarded costs of the case.

DATED, SIGNED AND DELIVERED ON THE 18TH DAY OF APRIL, 2024



B. O. M. MANANI

JUDGE

In the presence of:

.....for the Claimant

.....for the Respondent

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

