



**Gisoni v Postal Corporation of Kenya (Cause E335 of 2021)
[2023] KEELRC 866 (KLR) (14 April 2023) (Ruling)**

Neutral citation: [2023] KEELRC 866 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E335 OF 2021
NJ ABUODHA, J
APRIL 14, 2023**

BETWEEN

JOHN NYANGARESI GISONI CLAIMANT

AND

POSTAL CORPORATION OF KENYA RESPONDENT

RULING

1. It was not in dispute that the claimant instituted action against the respondent for recovery of Kshs 632,428/= owed to him due to failure by the Respondent to remit funds to Postal Corporation of Kenya Staff Retirement Benefits Scheme. The Respondent settled the principal amount of Kshs 528,341.40. However the issue of costs and interest remained unsettled hence the need for this ruling.
2. Ms Jane Miyogo for the Respondent submitted in the main that the Claimant did not prosecute the case to its conclusion hence it would be unfair for costs and interests to be awarded no their favour. According to Counsel, the parties herein agreed to settle the matter hence it would not be fair to order costs.
3. Counsel for the Claimant, Mr Moriasi on the other hand submitted that the Claimant instructed his advocate to issue a demand letter, there was no response. A claim was subsequently filed for the sum of Kshs 632,428/=.
4. Earlier, according to Counsel, the Claimant was supplied by the Respondent's Staff Benefit Scheme with a statement of contribution showing the arrears not remitted to it by the Respondent dating back to 2015 up to June 2020 amounting to Kshs 526,584/= and interest of Kshs 105,843/= at an interest rate of 2017 making it a total of Kshs 632,428/=.
5. Counsel further stated that the Respondent promised to settle the matter out of Court and that on December 3, 2021, they informed that advocates that they had forwarded a cheque of Kshs 528,341/



- = to the scheme for payment to the Claimant which was received on account. The balance of Kshs 105,843/= being interest remained unpaid.
6. According to Counsel, on or about November 10, 2022, the parties had a without prejudice meeting to discuss the interest and costs of the suit. The parties agreed at Kshs 238,107/= and the only pending issue was approval of the Board.
 7. As was held in the case Republic v Rosemary Wairimu Munene Judicial Review No 6 of 2014 relied on by the Counsel for the Respondent, costs follow the event. The concept however ought not be used to penalize the losing party, rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case.
 8. Counsel for the Respondent was right when she submitted that the Court can waive costs in certain cases such as litigation involving public interest or where parties settle a matter by consent.
 9. In this particular case there was no settlement by consent. The Respondent simply sent the arrears of the Claimant's benefits unremitted less interest. The interest was not an idea by the Claimant but by the Staff Benefits Scheme which must have been in accordance with its rules where there are arrears in contributions to the scheme.
 10. The Court therefore is of the view that costs and interest are payable as initially computed at Kshs 105,843/= and costs as agreed at Kshs 96,540/=.
 11. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 14TH DAY OF APRIL 2023

ABUODHA JORUM NELSON

JUDGE

In the presence of:-

Moriasi for the Claimant

Bosire for the Respondent

