



**Mulwa v African Medical and Research Foundation (Cause
414 of 2012) [2023] KEELRC 1947 (KLR) (28 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1947 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 414 OF 2012
NJ ABUODHA, J
JULY 28, 2023**

BETWEEN

DAVID MUTAVA MULWA CLAIMANT

AND

AFRICAN MEDICAL AND RESEARCH FOUNDATION RESPONDENT

RULING

1. The court in its ruling delivered on February 3, 2017 stated at paragraph 12 and 13 as follows;-
 - a. “The claimant’s services were not terminated in 2010 as he claims. An employer has the discretion to assign an employee duties at any site provided the duties to be performed are those which the employee contracted to perform. This becomes more common as is the case here where the employer owns or has controlling shares in a sister or subsidiary company. The claimant continued to draw salary and allowances from the respondent until his retirement in 2015. His payslips were issued by the respondent and not Amref Flying Doctors”.
 - b. “On the issue of payment of severance pay it would from the plain reading of the clause 19 of the service agreement of September 27, 2002 appear that this was not payable on account of redundancy only. An employee proceeding on retirement as the claimant was also entitled to severance pay. It was submitted by counsel that the claimant was paid a lumpsum of 24 million. The court was however not taken through how this figure was arrived at. That is to say whether the severance pay as provided under clause 19 of the service agreement was taken into account”.
2. In that ruling, the court erroneously lifted clause 19 of the service agreement which made provision for the payment of severance pay by using the phrase “in exceptional cases” instead of “in exception of cases” as provided in that clause. This error gave clause 19 a totally different meaning.



- 3. Counsel for the respondent noted this and consequently moved the court through an application dated February 15, 2017 for a review of the court’s ruling. The court acknowledged the error and exercising it’s powers under rule 33 of the court’s rules corrected the error.
- 4. Whereas Mrs. Wetende contends that the order made on the application for review meant the claimant was not entitled to severance pay. Mr Imanyara on the other hand contended that his client was declared redundant hence entitled to severance pay.
- 5. The court pronounced itself in its ruling dated February 3, 2017 on the issue whether the claimant was declared redundant or not. This is found at paragraph 12 of the ruling quoted above. The court however proceeding on the erroneous reading of clause 19 of the service agreement stated that the claimant was also entitled to severance pay. This was corrected when the court delivered it’s ruling on the review application allowing the same.
- 6. The consequence therefore is that the claimant having retired was excepted from payment of severance pay as per clause 19 of the service agreement hence cannot claim the same.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS DAY OF 28TH DAY OF JULY, 2023.

ABUODHA J. N.

JUDGE

In the presence of:-

.....**for the claimant**

.....**for the Respondent**