



**Obonyo & 165 others v Spectre International Ltd (Cause 67 of 2019)
[2023] KEELRC 3190 (KLR) (6 December 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3190 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 67 OF 2019
S RADIDO, J
DECEMBER 6, 2023**

BETWEEN

DUNCAN OBONYO & 165 OTHERS CLAIMANT

AND

SPECTRE INTERNATIONAL LTD RESPONDENT

RULING

1. In a judgment delivered on 31 May 2023, the Court issued the following orders:
 - i. A declaration is hereby issued that the claims prior to 19 July 2016 are caught up by the limitation prescribed by section 90 of the [Employment Act](#), 2007.
 - ii. A declaration is hereby issued that the Respondent is liable to refund the Claimants' contributions deducted towards Sacco contributions but not remitted to the Sacco.
 - iii. A declaration is hereby issued that the Respondent is liable to refund the Claimants' contributions towards the Provident Fund but not remitted to the Fund.
 - iv. An order is hereby issued that the parties meet, compute and agree on the amounts declared as due in (ii) and (iii) above and file a report with the Court within 45 days.
2. The parties could not agree on the computations and on 21 September 2023, the Court directed the Claimants to file their computations within 7 days (the Claimants filed their computations on 22 September 2023. The Respondent had filed its computations on 8 September 2023).
3. The Court took submissions on the computations on 12 October 2023, with a view to having a settlement.



4. The Claimants urged the Court to reject the computations by the Respondent because the computations only factored in contributions that had been made by the employees and not the employer while both had been making contributions to the Provident Fund.
5. The Claimants also contended that their computations reflected the 13 months awarded by the Court, while the Respondent had based its computations on 6 months.
6. With respect to the Sacco contributions not remitted to the Sacco, the Claimants argued that the Respondent's computations had completely omitted to include the said unremitted contributions.
7. For the Respondent, the argument was made that its computations were aligned with the findings of the Court in paragraph 61 of the judgment that it was only liable for unremitted deductions towards the Provident Fund and Sacco contributions from 19 July 2015 up to the time of separation in December 2017.
8. The Respondent also asserted that no Sacco deductions were made from 19 July 2016 to 31 December 2016, and that the deductions due to the Provident Fund were made to the trustees directly and that they had also made provision for statutory deductions.
9. The Respondent admitted that its computations only factored in the employees' contributions.
10. Finally, the Respondent argued that it made part payment in 2017 after a mediation agreement.
11. The Court has considered the material placed before it and makes the following findings.
12. One, both the Claimants and the Respondent were required to make contributions towards the Provident Fund and, therefore, it was incorrect and mischievous of the Respondent to factor only the Claimants contributions while computing the refunds due.
13. Two, the Respondent did not place before the Court any evidence during the hearing that it made any direct payments to the trustees of the Provident Fund on behalf of the Claimants during the material period.
14. Three, the Court made a finding on the period the Respondent was liable for deducting and not remitting contributions to the Provident Fund and Sacco and 6 months did not feature at all in the findings.
15. Lastly, the Court made a finding that the mediation agreement was to form part of the judgment and any outstanding payments would be payable as part of the judgment.

Conclusion and Orders

16. In settlement of the sums due under the judgment delivered on 31 May 2023, the Court endorses and adopts the computations filed by the Claimants in Court on 22 September 2023 in the sum of Kshs 18,965,797/72.
17. Costs in the cause.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 6TH DAY OF DECEMBER 2023.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances



For Claimant Omondi, Abande & Co. Advocates

For Respondent Awele Jackson Advocates LLP

Court Assistant Chrispo Aura

