



Kenya Union of Commercial Food & Allied Workers Union v Kenya Post Office Savings Bank (Cause 122 of 2003) [2022] KEELRC 4049 (KLR) (12 May 2022) (Ruling)

Neutral citation: [2022] KEELRC 4049 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 122 OF 2003**

**M MBARÚ, J
MAY 12, 2022**

BETWEEN

**KENYA UNION OF COMMERCIAL FOOD & ALLIED WORKERS
UNION CLAIMANT**

AND

KENYA POST OFFICE SAVINGS BANK RESPONDENT

RULING

1. On January 18, 2022 the court delivered ruling herein directing the respondent to pay the claimant the balance due from the judgement sum with costs and interests and unil paid in full.
Parties have not agreed on when costs are due.
2. The claimant submitted that the orders of January 18, 2022 on costs applied to the total judgement sum and not limited to the balance as assessed and awarded and only fair that full costs be paid to the claimant taking into account the time taken to prosecute the matter.
3. The respondent submitted that the costs awarded only related to a limited amount and balances due and which the respondent has since paid in full. the claimant is at liberty to tax the bill of costs for the balance on costs and interests due.

Determination

Indeed on January 18, 2022the court directed that;

Accordingly, the claim for the payment of the full award as at March 4, 2020when employment terminated is the sum of Ksh 9,398,327 which remains unpaid and due and shall be paid with costs and interests from March 4, 2020and until paid in full.



4. In the subject ruling addressed above, the core issue in dispute was with regard to the balance of judgement sum due to the claimant as at March 4, 2020 when her employment terminated after the respondent failed to comply with the order of reinstatement.
5. The respondent also failed to abide with the alternative orders of paying the claimant her terminal dues. this has resulted in these proceedings and the instant matter with regard to costs.
6. The orders and judgement delivered on September 1, 2004 in its nature allowed the respondent the leeway to comply and reinstate the claimant and where such remedy was not found viable, to pay the claimant her terminal dues. matters ought to have ended with the order of reinstatement and return the claimant back to her position as prevailing before employment was unfairly terminated. That was not to be. The respondent sat back and allowed employment to terminate.
7. Pursuant to section 12(4) of the *Employment and Labour Relations Court Act, 2011* costs in a suit are to be awarded based on the court discretion. The court must consider what is fair and just in a given case;
 - (4) In proceedings under this Act, the court may, subject to the rules, make such orders as to costs as the court considers just.
8. Since September 1, 2004 the claimant has been forced to incur costs herein to pursue her claim. The court discretion in awarding costs must be applied judicially and to ensure justice both ways.
9. In the instant case, the conduct of the respondent put into account, particularly the judgement delivered on September 1, 2004 and the non-payment of terminal dues since and until the claimant was forced to move court, costs are due on the total sum of dues paid to the claimant in accordance with the judgement going back to 1st September, 2004 and which shall be taxed accordingly.
10. The claimant is entitled to the full costs herein from September 1, 2004 and until paid in full with interests due at court rates. Costs shall be assessed accordingly.

DELIVERED IN COURT AT NAIROBI THIS 12TH DAY OF MAY, 2022.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Okodoi

..... and

