



REPUBLIC OF KENYA



KENYA LAW
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Onianga v Infama Limited (Cause 1630 of 2014)
[2022] KEELRC 3934 (KLR) (22 September 2022) (Ruling)

Neutral citation: [2022] KEELRC 3934 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1630 OF 2014
L NDOLO, J
SEPTEMBER 22, 2022

BETWEEN

JAMES AMISI ONIANGA APPLICANT

AND

INFAMA LIMITED RESPONDENT

RULING

1. By his notice of motion dated October 4, 2021, the applicant (5th claimant in the main claim) seeks interpretation of the judgment delivered on April 20, 2018. Specifically, the applicant pursues a declaration as to whether he should be paid the sum of Kshs 61,714.85 in leave pay, as claimed in the statement of claim.
2. The motion is supported by an affidavit sworn by the applicant's counsel, SJ Saenyi and is based on the following grounds:
 - a. By this court's judgment delivered on April 20, 2018, the court directed the respondent to tabulate and pay the claimants leave allowances within 14 days from the date of judgment;
 - b. Despite the clear judgment and decree of the court, the respondent has only paid an amount of Kshs 31,174.13 leaving a balance of Kshs 30,540.71 unpaid to date;
 - c. The applicant asks the court to exercise its unfettered inherent jurisdiction to render an interpretative ruling being alive to the facts and full tenor and effect of the judgment to be honoured in full.
3. In the affidavit in support of the motion, the applicant's counsel, SJ Saenyi depones that in purported compliance with the judgment, the respondent made payment of Kshs 152,357.85 indicating that the 5th claimant was only entitled to Kshs 31,174.14 as leave pay instead of the full claimed, admitted and decreed sum of Kshs 61,714.85.



4. The applicant's counsel states that the respondent has failed to avail evidence of payment of statutory deductions as the reason for the reduction of the decree amount.
5. Counsel accuses the respondent of denying the 5th claimant the fruits of his judgment.
6. The respondent's response to the application is contained in a replying affidavit sworn by its managing director, Steve Wanjau on July 18, 2022.
7. Wanjau depones that in its judgment delivered on April 20, 2018, the court did not find that the sum of Kshs 61,714.85 claimed by the applicant was actually payable. He states that what the court found was that in principle, the claim for leave pay was payable and directed the respondent to compute and remit the leave pay to the claimants within 14 days.
8. Wanjau further depones that in compliance with the order of the court, the respondent computed the leave pay due to the applicant as Kshs 34,946.24 which was then subjected to statutory deductions pursuant to section 49 of the Employment Act, leaving a net amount of Kshs 31,174.14 which was paid to the applicant.
9. In the memorandum of claim dated September 15, 2014 and filed in court on September 16, 2014, the applicant sought Kshs 61,714.85 as leave pay
10. In its judgment dated April 20, 2018, the court stated the following:

“The court... noted that by the replying affidavit sworn by its General Manager-finance, the respondent concedes that upon the claimants' resignation, the respondent tabulated their final dues made up of 30 days' notice pay, days worked in August and accumulated leave days. From this deponement, it is clear that the respondent had already admitted owing the claimants accumulated leave pay. In light of this, the court holds the respondent to its admission and directs it to pay the claimants their entire accumulated leave pay...In the end, the only claim which succeeds in this case is the one on leave pay which I direct the respondent to tabulate and pay to the claimants within the next fourteen (14) days from the date of this judgment.”
11. A plain reading of the judgment reveals that the award on leave pay was based on the respondent's admission under that head. The court did not in any way adopt the applicant's figure as pleaded in the memorandum of claim. Rather, it directed the respondent to tabulate the amount payable as leave pay as per the respondent's admission.
12. That said, there is nothing to clarify in the subject judgment and the resultant finding is that the notice of motion dated October 4, 2021 is without merit and is disallowed.
13. Each party will bear their own costs.
14. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF SEPTEMBER 2022

LINNET NDOLO

JUDGE

Appearance:

Mr. Saenyi for the Applicant

No appearance for the Respondent

