



Nzau v Kenya National Union of Teachers (Machakos Branch) (Cause 191 of 2016) [2022] KEELRC 13194 (KLR) (11 November 2022) (Judgment)

Neutral citation: [2022] KEELRC 13194 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 191 OF 2016
SC RUTTO, J
NOVEMBER 11, 2022**

BETWEEN

ROBERT MUINDE NZAU CLAIMANT

AND

**KENYA NATIONAL UNION OF TEACHERS (MACHAKOS
BRANCH) RESPONDENT**

JUDGMENT

1. The claimant avers that at all material times, he was a member of the respondent by virtue of being a teacher and was assigned Member No 6095. That he was sending monthly contributions to the respondent in compliance with its rules and regulations. That at the time of his retirement in December, 2007, he had contributed Kshs 46,608.00 towards the respondent's burial benevolent scheme and Kshs 41,720.00 towards the education scheme, thus bringing the total sum of his contributions to Kshs 88,328.00.
2. The claimant further states that the decision of the respondent to withhold his contribution is unlawful, illegal and unjustified. The claimant subsequently seeks against the respondent the sum of Kshs 88,328.00 plus costs and interests of the suit.
3. On its part, the respondent denied that the claimant is its member and that he contributed towards the burial benevolent scheme. The respondent further stated without prejudice, that if at all the claimant was its member, then it refunded all his dues.
4. The matter proceeded for hearing on July 5, 2022 and the respondent as well as his representative were absent from Court. Subsequently, the claimant produced an affidavit of service sworn on July 4, 2022 by one Alex Wambua Muthenya in which he depones that he effected the day's hearing notice on both the respondent and its Advocate on record.



5. Being satisfied with the return of service, the Court directed that the matter proceeds for hearing, notwithstanding the respondent's absence.
6. The claimant testified in support of his case and at the outset, asked the Court to adopt his witness statement, documents and supplementary documents, to constitute his evidence in chief. He also produced the said documents as his exhibits before Court. The claimant testified that upon retirement, he automatically became entitled to the refund of his money totalling Kshs 88,328.00. Consequently, he asked the Court to order the respondent to pay him the money he had contributed.

Submissions

7. In its submissions, the claimant reiterated the averments contained in his memorandum of claim. He urged that he had proved his case on a balance of probability and that he had overwhelming evidence which remains uncontroverted.

Analysis and determination

8. Flowing from the pleadings on record, the evidence exhibited, and the opposing submissions, it is evident that the Court is being called to determine whether the claimant is entitled to his contributions from the respondent, as claimed.
9. The claimant has proved membership to the Masaku Education Scheme through his pass book which he exhibited before Court. The said pass book bears his name and indicates his membership number as 6095. Despite the respondent's denial that the claimant was its member, it did not lead any evidence to prove its assertions. Further, it did not discount the claimant's evidence in that regard.
10. With regards to his contributions, the claimant exhibited a schedule containing his payments towards the Education Scheme. It is therefore evident that the claimant was contributing towards the scheme and the last balance as shown in the said schedule, is Kshs 41,220.00.
11. What I have not seen is evidence proving the claimant's contributions towards the burial benevolent scheme. In this regard, despite the claimant indicating that he had exhibited copies of his pay slip to prove his contributions towards the burial benevolent scheme, there was none on record.
12. It is trite law that a claim which is specific in nature ought to be specifically pleaded and strictly proved. In this case, the only claim which I find as having been proved by the claimant is the sum of Kshs 41,220.00 and he is entitled to the same. The claim as regards the burial benevolent scheme is declined for want of proof.

Orders

13. In the final analysis, I allow the claim to the extent that the claimant is entitled to his contributions towards the respondent's education scheme, being in the sum of Kshs 41,220.00. Interest shall apply at court rates from the date of filing the suit until judgment in full.
14. The claimant shall have the costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11TH DAY OF NOVEMBER, 2022.

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STELLA RUTTO

JUDGE



Appearance:

For the Claimant Mr Munyao

For the Respondent No appearance

Court Assistant Abdimalik Hussein

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on March 15, 2020 and subsequent directions of April 21, 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the *Civil Procedure Rules*, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the *Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the *Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

