



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT KISUMU
CAUSE NO. 438 OF 2017

JAMES OYUGI MANGLA.....CLAIMANT

VERSUS

KENYA NATIONAL UNION OF TEACHERS.....1st RESPONDENT

KENYA NATIONAL UNION OF TEACHERS,

HOMA BAY BRANCH.....2nd RESPONDENT

RULING

1. On 7 May 2019, James Oyugi Mangla (the Claimant) and the Kenya National Union of Teachers and the Kenya National Union of Teachers, Migori Branch (the Respondents) agreed to a consent in the following terms:

(1) Without prejudice to the Claimants Memorandum of Claim, the Respondents Defence and final Judgment herein, parties agree that pending hearing and determination of the Claim the Respondents shall release to the Claimant the following dues:

Item

(1) Terminal benefits

(2) Severance pay

(3) Unpaid salaries

(4) Service gratuity

(5) Balance of Court consent in ELRC Cause No. 1325/12

(6) Salary arrears

Subtotal

Less statutory deductions

Tax on terminal benefits and severance pay

Tax on salary – February to May 2016

Tax on service gratuity – February 2014 to December 2017

Tax on salary arrears Other deductions on salary – Feb to May 2016

NSSF

NHIF

BBS

KNUT Reserve Fund

Payments August 2017 to December 2018 (10000 X 17 months)

Deduction on salary arrears already paid

Less payments made to Onyony & Co Advocates Cheque 035736 dated 05/02/2019

Cheque 035737 dated 05/03/2019

Cheque 035739 dated 05/04/2019

TOTAL Deductions

Total Net Balance

(2) The Claimant acknowledges receiving five (5) post-dated cheques No. 035734, 035736, 035737, 035738 and 035739 of Kshs 516,402.90 each, totalling Kshs 2,582,014.50 and further acknowledges that cheques No. 035734, 035736, 035737 totalling Kshs 1,549,208.70 have, as at the date of this consent matured and/or encashed.

(3) Pursuant to the interim orders of this Court dated 7 February 2019, the Respondent stopped payment of cheques No. 035738 and 035739. The Claimant shall, within 7 days from the date of filing this consent, issue the Claimant's advocate with a cheque for Kshs 62,629.40, being the balance of the sums payable under clause 1 herein.

(4) The application dated 5 February 2019 is hereby marked as settled.

(5) The costs of this application shall be in the cause.

2. The Court adopted the consent on 14 May 2019 and directed that the Cause be heard on 18 September 2019.

3. When the parties appeared for hearing as scheduled and before the hearing commenced, the Claimant informed the Court that only 2 Issues were pending: whether there was wrongful, unlawful, and unfair redundancy.

4. The Court consequently directed the parties to file and exchange submissions on the questions:

(i) Whether the declaration of redundancy was lawful and fair?

(ii) Whether the Claimant is entitled to further terminal benefits.?

(iii) (iii) Who should bear the costs of this suit?

5. The parties filed the submissions, and the Court took highlights on 18 December 2019 and Judgment was delivered on 11 June 2020.

6. In the Judgment, the Court found that the termination of the Claimant's employment on account of redundancy was unlawful.

7. On the terminal dues still outstanding, the Court held:

68. Under paragraph 6 of the Statement of Claim, the Claimant prayed for payment of a total sum of Kshs 16,991,973 set out in Annexures JMO 2 and 2a attached. The amount includes sums in the consent judgment.

69. For the avoidance of doubt, any sums claimed and emanating from the consent judgment cannot be the subject of this suit. The Claimant obtained a separate judgment and decree in that matter which included the mode of payment of the decretal amount. That dispute cannot be subject of further adjudication in this suit. The same is res judicata same in respect of enforcement of the decree.

8. The Court eventually made the following findings of fact and the law and entered Judgment as follows, in brief:

(i) Service gratuity for 2013 time-barred.

(ii) Claim for Kshs 48,912/65 time-barred.

(iii) Claim for loss of income lacks merit.

- (iv) Consent judgment balance Kshs 1,201,983/55 is *res judicata*.
- (v) Severance pay of Kshs 478,750 for 1 September 1992 to 30 December 2017 had already been paid.
- (vi) Service gratuity for January 2013 to 25 June 2014 had already been paid and was *res judicata*.
- (vii) Claimant was entitled to service gratuity of Kshs 290,672/- for February 2014 to December 2017.
- (viii) Claimant was entitled to Kshs 48,912/50 being referable gratuity for 2008 to 2012.
- (ix) Claimant was entitled to terminal leave amounting to Kshs 530,940/-.
- (x) Claimant was entitled to burial and development funds deducted amounting to Kshs 76,700/-.
- (xi) Claimant was not entitled to salary arrears of Kshs 1,237,750/30 or Kshs 273,760/-.
- (xii) Claimant was entitled only to and had already been paid terminal lump sum of Kshs 503,460/-

9. The Deputy Registrar issued a decree in terms of the Judgment on 5 November 2020, and the Claimant moved to execute for:

- (i) Decretal sum of Kshs 1,450,684/05.
- (ii) Interest of Kshs 592,362/60.
- (iii) Costs of Kshs 339,454/-.
- (iv) Court collection fees of Kshs 1,500/-.

10. The Respondents, however, thought the warrants included monies already paid, and they moved the Court through a Motion dated 22 November 2020 seeking orders:

- (i) ...
- (ii) ...
- (iii)
- (iv) The Honourable Court be pleased to settle the terms of the Judgment of the Court dated 11 June 2020 and the resultant decree dated 5 November 2020 against the consent of the Court dated 6 May 2019 filed in Court on 9 May 2019 and adopted by the Court (Hon Justice M. Nduma Nderi) on 14 May 2020.
- (v) In the alternative, the Honourable Court be pleased to review and/or clarify the actual outstanding sums due and payable under its Judgment and decree as against the consent of the Court dated 6 May 2019, filed in Court on 9 May 2019 and adopted by the Court (Hon M. Nduma Nderi) on 14 May 2020.
- (vi) Subject to prayers 4 and 5 above, the Honourable Court be pleased to raise the attachment of the Respondents properties made vide the proclamation, attachment and/or sale of the applicants' goods.
- (vii) The costs of this application.

11. The Court issued an interim stay of execution on condition the Respondent deposits the decretal sum in Court and further certified the Motion urgent and directed that it be served ahead of directions on 1 December 2020.

12. The Claimant filed a replying affidavit in opposition to the Motion on 30 November 2020

13. The Respondents did not attend the Court for directions, and on 1 December 2020 and the Court rescheduled the session to 2 December 2020. The interim orders were vacated.

14. On 2 December 2020, the Court reinstated the interim orders on the condition that the decretal sum would be deposited in the Court upon the application of the Respondents.

15. On 19 January 2021, the Court indicated that it would take submissions on the Motion on 20 January 2021. The Court had brief oral submissions and requested the parties to attempt to settle the dispute, but no settlement was reached.

16. On 26 January 2021, the Court directed the parties to file and exchange submissions within set timelines. The Claimant filed his

submissions on 23 March 2021. The Respondents filed their submissions dated 9 March 2021 but Court stamped 28 April 2021.

17. The Court has keenly perused the record and the submissions.

18. The clue(s) to unlocking the stalemate appears to the Court to be straightforward and requires a 3-step inquiry.

19. The broader question to the clue being whether the Court granted heads of claims/reliefs, which had already by settled through the consent order of 14 May 2019.

20. The first issue, therefore, becomes what positive remedies the Court granted.

21. The positive remedies allowed by the Court in the final Judgment were:

(i) Service gratuity for February 2014 to December 2017 of Kshs 290,672/- at paragraph 63.

(ii) Referable gratuity for 2008 to 2012 of Kshs 48,912/05 at paragraph 64.

(iii) Terminal leave of Kshs 530,940/-.

(iv) Burial and development fund refund of Kshs 76,700/-.

22. The next step of the inquiry then revolves around the answer to the question, what heads of claims/reliefs had the parties agreed to in the consent dated 7 May 2019 and which were allowed by the Court.

23. The consent shows that the parties had agreed to a service gratuity of Kshs 290,672/- under item number 4 and the same had been paid. Despite the same, the Court allowed the same in the judgment. The amount ought to be deducted.

24. The other 3 heads of claims/reliefs not captured in the consent and which this Court finds outstanding are:

(i) Referable gratuity

(ii) Terminal leave and

(iii) Refund of the burial and development funds.

25. These 3 heads come to a total of Kshs 656,554/05.

26. In the view of the Court, this Kshs 656,554/05 was the amount outstanding out of the Judgment of the Court delivered on 11 June 2020, and not the sum of Kshs 1,450,684/60 as indicated in the application for execution of the decree.

27. The third step of the inquiry would then be an answer to the question, what sums are outstanding .

28. The answer according to the Court is:

(i) Decretal sum Kshs 656,554/05

(ii) Costs Kshs 339,454/-

(iii) Court collection fees Kshs 1,500/-

TOTAL Kshs 997,508/05

29. As directed in the Judgment, interest should be computed using the total amount in the preceding paragraph.

30. Flowing from the above, the Court allows order 4 in the Motion dated 22 November 2020 in the terms outlined in paragraph 28 hereinabove.

31. Due to the nature of the dispute, the Court orders that costs be in the cause.

Delivered through Microsoft teams, dated and signed in Nairobi on this 29th day of April 2021.

Radido Stephen, MCI Arb

Judge

Appearances

| | |
|-----------------|-----------------------------|
| For Claimant | Onyony & Co. Advocates |
| For Respondents | Awele Jackson Advocates LLP |
| Court Assistant | Chrispo Aura |