



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS**

**COURT OF KENYA AT NAIROBI**

**CAUSE NO. 998 OF 2018**

**DR. EDWIN GICHANGLI.....CLAIMANT**

**VERSUS**

**KENYA CULTURAL CENTER.....RESPONDENT**

**RULING**

1. The Claimant/Applicant filed a Notice of Motion Application dated 21<sup>st</sup> September 2020 seeking to be heard for orders that this Honourable Court be pleased to clarify its ruling delivered on 6<sup>th</sup> December 2019 by way of stating the amount in salary arrears/dues and payable to the Claimant. The Application is based on the grounds that on 6<sup>th</sup> December 2019, this Court passed a verdict finding that the Claimant had done a proper handover and should be cleared and paid his accrued salary/ dues up to 31<sup>st</sup> August 2019. That the Claimant wrote to the Respondent on 10<sup>th</sup> December 2019 asking for salary arrears, leave allowance for 2018, gratuity for 36 months and compensation for 62 leave days not taken; all totalling to Kshs. 8,566,821/-. That the Respondent however disputed the figures on account of allegations and only offered to pay the Claimant salary arrears amounting to Kshs. 2,166,417/- in 4 instalments. That the Claimant refused the said offer as he felt the Respondent was being evasive and punitive and seeking to revisit issues of handing over already decided by the Court. Nevertheless, that the Respondent nevertheless dispatched a banker's cheque to the Claimant on 27<sup>th</sup> July 2020 as the 1<sup>st</sup> instalment of its proposed payment. Further, that it is clear that the parties herein have been unable to reach consensus on the amount to be paid to the Claimant by the Respondent. That the Court having determined that the Claimant had properly handed over, the Respondent has no right to hold on to the Claimant's salary arrears/ dues and should pay the same in full. That the Respondent is illegally and wilfully disobeying the orders of the Honourable Court to release the said arrears/dues to the Claimant who believes the Respondent is taking advantage because the Court did not direct payment of a specific amount. That it is also for this reason that the Claimant has been unable to extract a decree capable of enforcement and that this Court has the duty and mandate to clarify its own orders as requested so as to ensure the ends of justice are met. In his Supporting Affidavit, the Claimant/Applicant avers that the delay in bringing his application has been occasioned by the various back and forth in the matter as he had utmost hope that the Respondent would respect the orders of the Court and pay the salary arrears/dues as directed.

2. The Respondent filed a Replying Affidavit sworn on 8<sup>th</sup> October 2020 by its substantive CEO, Michael Pundo who avers that the orders sought cannot be granted as it would be tantamount to disposing off the substratum of the entire proceedings through an interlocutory application. That the same would violate the Respondent's right to be heard in support of the Respondent's pleaded triable issues which include procurement impropriety and financial impropriety by the Claimant. That it is also settled law that where assessment of final dues is disputed, the same can only be done through substantive oral hearing of witnesses and production of evidence and he believes that the Application is vexatious and an abuse of court process. He further avers that the Respondent gave legal reasons substantiating its computations based on the Claimant's terms of remuneration under his contract. He urges this Court ought to uphold the Respondent's right to be heard on the substantive suit so as to substantiate the financial impropriety by the Claimant. He further avers that granting the orders sought would also be contrary to public interest as the funds embezzled by the Claimant were public funds entrusted to the Respondent. That this Court can only issue a decree on the Claimant's dues if any after taking into account the embezzled funds whose recovery has lawfully been commenced by the Respondent.

3. The Claimant/Applicant's advocate argued that the Respondent's response to his letter seeking accrued dues contradicted the finding of the Court and that the same need to be assessed and not to be proved. That the Court already determined there was a proper handover and the accrued salaries and dues were thus due. The Respondent's advocate in opposition submitted that they rely on the digest of authorities filed before Court and the skeleton submissions. He submits that Radido J. did not address himself to financial aspects of handover and that the Claimant is conveniently evading the issue of financial impropriety which can only be determined at full trial. That the employer is to deduct any excess wages and any amount fleeced from it and that there cannot be final orders on interlocutory application.

4. In a rejoinder, the Claimant/Applicant's advocate submits that the Claim of 19<sup>th</sup> June 2018 was premised on suspension and the orders sought have since been overtaken by events and that the Claim cannot therefore be set down for hearing. That the only reason the suit is active is because the Claimant has not been paid his dues. He submits that they rely on the first authority cited by the Respondent and argues that there exist exceptional circumstances that warrant a grant of interim and interlocutory relief before full hearing. He denied that they are opposed to full hearing and submits that if the Respondent feels there are issues to articulate, it can file suit.

5. All the Court has been asked to clarify is the Ruling herein which was delivered on 6<sup>th</sup> December 2019. In the Ruling by Radido J. is clear. The Court equally found that the Claimant had handed over and was entitled to accrued salaries/dues up to 31<sup>st</sup> August 2019. There is no clarification necessary as the decision of Radido J. was unambiguous and in plain English. The motion is dismissed with no order as to costs. The suit should be set down for hearing in order to remove this matter from the queue of pending matters and directions for the disposal of the suit shall be issued on Wednesday 28<sup>th</sup> April 2021 after parties confirm compliance with pre-trial procedures.

It is so ordered.

**Dated and delivered at Nairobi this 21<sup>st</sup> day of April 2021**

**Nzioki wa Makau**

**JUDGE**