



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 566 OF 2010

PATRICK MAYAMBA, SIMON MUSEMBI,

RICHARD ODUOR AND 47 OTHERS.....CLAIMANTS

VERSUS

AFRO PLASTICS KENYA LIMITED.....RESPONDENT

RULING

1. Hon. Abuodha, J. delivered a judgment in this matter on 28th June, 2018. An application to review the judgment was considered by the trial Court and the same was dismissed in a ruling dated 11th March, 2021.

2. In the judgment of 29th June, 2018, the Court found in favour of the claimants and awarded them under paragraphs 22 and 23 of the judgment as follows:-

Paragraph 22 of the Judgment-

The Court in conclusion finds and holds that the claimant's services were unfairly terminated and awards each of them as follows:-

- (a) One month's salary in lieu of notice.**
- (b) Service gratuity at the rate of 15 days salary for each year of service.**
- (c) Eight months' salary as compensation for unfair termination.**
- (d) Costs of the suit.**

Paragraph 23 of the Judgment

Items (a) (b) and (c) shall be subject to taxes and statutory deductions. Considering the numbers involved, Counsel for the parties shall liaise with their respective clients and compute the actual amount due to each claimant based on the heads of compensation above and report to Court for recording of final order.

3. The parties have filed their respective computations dated 22nd July, 2021. The Court has carefully considered both computations and noted that there is disparity in the monthly salary paid to each claimant as stated by the claimants *vis a vis* that provided by the respondents.

4. The monthly salary is the basis of computation of other items including notice pay, service pay and compensation awarded to each of the claimants. Another point of departure which has also caused disparity in the total sums awarded to each employee is the number of years served by each one of them.

3. These disparities ordinarily ought to have been resolved in the judgment of the Court and cannot be revisited at the stage of computation.

4. The employer is deemed to be the custodian of Employment records in terms of Part III, Sections 9 to 15 as read with Section 74(1) of the Employment Act, 2007.

5. The claimant filed its computation first followed by the respondent.

The claimant has not joined issue with the computation filed by the respondent subsequent to the filing by the respondent. The Court in the circumstances deems the record provided by the employer regarding particulars of employment of each claimant to be the correct version with regard to the date of employment, the period served and the salary earned by each of the claimants at the time of separation.

6. Accordingly, the Court adopts the computation filed by the respondent and dated 27th July, 2021 as an order of the Court and enters judgment in respect of each claimant according to the said computation which the Court deems an addendum to this ruling for purposes of taking out a decree.

7. It is so ordered. No order as to costs.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 9TH DAY OF DECEMBER, 2021.

MATHEWS N. NDUMA

JUDGE

Appearances

Mr. Anam for the claimant

Mr. Mbabu for Respondent

Ekale- Court clerk