



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1196 OF 2015**

**JAMES OMWOYO NYANGAU.....CLAIMANT**

**V**

**HERITAGE INSURANCE COMPANY LTD...RESPONDENT**

**JUDGMENT**

1. James Omwoyo Nyangau (Claimant) served Heritage Insurance Co. Ltd (Respondent) as an Accountant until he was retired under an early retirement programme on 23 November 2007.
2. The retirement notice advised the Claimant that he would be paid three months' salary in lieu of notice, one month salary for each year worked and refund of contributions to the Staff Pension Scheme.
3. On 9 July 2012, the Respondent paid the Claimant Kshs 556,810/- being the terminal dues under the retirement programme.
4. The Claimant felt that due to the delay in settlement of the terminal dues, he was entitled to interest and made a demand of Kshs 956,134/- from the Respondent on 19 December 2014.
5. Seeing no solution, the Claimant instituted these proceedings on 9 July 2015 alleging unfairness in the failure to pay interest on the dues.
6. The Respondent filed a *Statement of Defence* on 27 August 2015 raising a plea of *res judicata* since the Claimant had filed Cause No. 299 of 2012, *James Omwoyo Nyangau v Heritage Insurance Co. Ltd*, and wherein he had been awarded the terminal dues with interest.
7. The Claimant joined issue with the defence by filing a *Reply to Statement of Defence* on 16 September 2015.
8. The Respondent filed a List of Documents on 10 July 2018.
9. Despite the Court directing the parties more than once to file Agreed Issues, the same was not filed and when the Cause came up for hearing on 28 January 2020, the parties proposed that the Cause be determined on the basis of the record and submissions to be filed.
10. The Claimant filed his submissions on 20 February 2020 while the Respondent's submissions were not on record by 20 March 2020 as directed (no record even as of this morning).
11. The Court has considered the record and the submissions.

**Res judicata**

12. The Claimant was retired on 23 November 2007. He was promised terminal dues which were not forthcoming and he sued the Respondent in 2012 before the High Court alleging breach of contract and unfair termination of employment.
13. The suit was transferred from the High Court to this Court and registered as Cause No. 299 of 2012, *James Omwoyo Nyangau v Heritage Insurance Co. Ltd*.
14. Among the reliefs, the Claimant sought were payment of the terminal dues together with interest at court rates.
15. The Cause was heard on 1 February 2013, 12 April 2013 and 17 May 2013, and judgment was delivered on 7 February 2014. The

Claimant appealed against the judgment.

16. The Claimant raised the question of interest on the terminal dues before the Court in Cause No. 299 of 2012, *James Omwoyo Nyangau v Heritage Insurance Co. Ltd* but the Court did not address the issue to his satisfaction and therefore he appealed.

17. The issue was captured in Ground 6 of the Memorandum of Appeal (the Appeal became a legal cropper).

18. The primary issue advanced by the Claimant in the instant Cause was the subject of a judgment by the Court in Cause No. 299 of 2012, *James Omwoyo Nyangau v Heritage Insurance Co. Ltd* and the Court, therefore, finds that it is *res judicata*.

19. The Claimant, perhaps under advice, through ingenuity attempted to overfly the *res judicata* question by purporting to issue a fresh demand on 19 December 2014. That course of action cannot legally salvage the instant action.

20. From the foregoing, the Court upholds the plea of *res judicata* and dismisses the Statement of Claim with costs to the Respondent.

**Delivered through Microsoft teams/email, dated and signed in Nairobi on this 5<sup>th</sup> day of June 2020.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Mogire & Co. Advocates

For Respondent Mbai Waweru Advocates

Court Assistant Judy Maina