



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 327 OF 2014

(Before Hon. Justice Mathews N. Nduma)

WILSON KITERE.....CLAIMANT

VERSUS

THE BOARD OF GOVERNORS FRIENDS LUGULU MISSION HOSPITAL.....RESPONDENT

RULING

1. The suit herein was heard and determined by the court in its Judgment delivered on 12th July 2018 in favour of the claimant/applicant.
2. Subsequently, a consent order signed by advocates for the parties was filed on 9/11/2018 in terms of which the decretal sum of Kshs. 1,142,84 was to be liquidated in installments.
3. The court is satisfied that the decretal sum was liquidated in terms of the consent order filed by the parties.
4. The claimant/applicant brought application dated 12th September 2019 more than one year upon delivery of the Judgment and subsequent to filing of consent order by counsel for parties seeking an order for review of the Judgment of the court in the following terms:-
 - a. That the respondent does issue a certificate of service to the applicant.
 - b. That the respondent shall pay the applicant salary for the period between the date of the wrongful termination of the contract to the date when the contract was to terminate in accordance with the terms of the employment contract in the sum of Kshs. 1,466,986.
5. The application is opposed by the respondent by a replying affidavit sworn on 3/12/2109 and filed on 4/12/2019. The respondents had earlier filed application dated 3/4/2019 seeking to have the consent filed by the parties on 9/11/2018 be adopted as an order of the court.

Determination

6. The filed application dated 3/4/2019 seeking to have the consent order adopted as an order of the court is to be adopted as a matter of course having been drawn signed and filed by counsel for both parties and no party has sought to annul it on any permissible ground. The consent order which has already been implemented is adopted as an order of the court as prayed by the parties.
7. As regards the Application dated 12/9/2019, the same is grossly misconceived because the applicant seeks to resuscitate issues that were heard and determined by the court in the Judgment delivered on 12th July 2018.
8. Furthermore, the application which was brought after inordinate delay has laid no basis in terms of Rule 33(1) of the E&LRC (Procedure) Rules 2016 to review its Judgment delivered on 12th July 2018, which Judgment has already been complied with fully in terms of the subsequent consent order.
9. The issue of the certificate of service has been clarified by the respondent that the same has already been drawn by the respondent and may be collected by the claimant at the office.
10. The issue of payment of salaries for days not worked between the date of termination of the contract and the date when the contract should have terminated is *res judicata* and cannot be revisited by the court.

11. If the claimant was dissatisfied with the award given by the court in its Judgment, the proper manner of dealing with the grievance was by way of filing an appeal to the Court of Appeal.

12. Accordingly, the application by the claimant/ Applicant lacks merit and is dismissed with costs.

Ruling Dated, Signed and Delivered at Nairobi this 16th day of July 2020.

Mathew N. Nduma

Judge

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 15th March 2020, this ruling has been delivered to the parties online with their consent. 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 has 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 18 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.

Mathews N. Nduma

Judge

Appearances:-

Mr. Ocharo for claimant/Applicant

Mr. Sifure for Respondent.

Chrispo: Court Clerk