



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA**

**CAUSE NO 231 OF 2018**

**JOHN MUTHINI KITHOME.....CLAIMANT**

**VS**

**ALI MOHAMED NOORANI T/A OLYMPIC RESTAURANT.....RESPONDENT**

**RULING**

1. This ruling proceeds from the Respondent's application brought by Notice of Motion dated 30<sup>th</sup> May 2018 seeking orders to strike out the Claimant's claim.
2. The application, which is supported by the Respondent's affidavit, is premised on the following grounds:
  - a. The Claimant herein reported a dispute to the Ministry of Labour in Mombasa under reference MEA/CLSP/LD/MSA/LD.64/JUNE/CIO/017;
  - b. The Respondent was served with a statement from the Ministry of Labour dated 13<sup>th</sup> June 2017 stating the Claimant's grievances;
  - c. By letter dated 22<sup>nd</sup> June 2017, the Respondent responded to the statement denying the claims and requesting for a joint meeting to sort out the matter;
  - d. There was a joint meeting held by the State Department-Ministry of Labour where the Claimant's claim was heard and finally determined;
  - e. The Labour Officer calculated the Claimant's final dues at Kshs. 55,500 and issued a Certificate of Payment Agreement in full and final settlement of the Claimant's claim;
  - f. The Respondent paid the settlement amount by cheque to the State Department-Ministry of Labour, Mombasa and the Claimant collected the cheque and cashed it;
  - g. As it stands, the claim has been heard and fully determined and the Claimant's claim herein is therefore an abuse of the court process;
  - h. The claim herein has been brought in bad faith as the Claimant has failed to disclose any of the above facts in his Statement of Claim.
3. In his replying affidavit sworn on 6<sup>th</sup> December 2018, the Claimant admits that following termination of his employment on 26<sup>th</sup> May 2017, he sought assistance from the County Labour Officer in Mombasa. He further admits that discussions concerning his claim were held.
4. The Claimant however states that he was dissatisfied with the items as enumerated in the Certificate of Payment and he therefore declined to append his signature thereon. He thereafter sought further assistance and gave instructions to his Advocate who wrote a demand letter on 26<sup>th</sup> July 2017. He subsequently instituted the present claim.
5. The Claimant further states that it was after instituting the claim that he went to collect partial payment of Kshs. 55,500.
6. The single issue for determination in this application is whether the Claimant's claim is properly before the Court in light of Certificate of Payment Agreement dated 17<sup>th</sup> July 2017 and cheque for Kshs. 55,000 issued to the Claimant.

7. From the evidence on record, there were conciliation proceedings between the parties, presided over by the County Labour Officer, Mombasa. The Claimant however declined to sign the Certificate of Payment Agreement dated 17<sup>th</sup> July 2017 but later collected a cheque for Kshs. 55,500 from the State Department for Labour-Mombasa.

8. The amount in the cheque issued to the Claimant is as captured in the Certificate of Payment Agreement. As held in *Elizabeth Wanjiru Njogu v Kangei Nyakinyua Building Co. Ltd (Cause No 385 of 2011)* and subsequently in *Wario Gorise v Vicky Kabetu (Director, Muthithi Plantation Estate [2013] eKLR* and *Kenya Shoe and Leather Workers Union v Modern Soap Factory [2018] eKLR* a party who fails to take issue during a conciliation process and goes ahead to reap benefits therefrom cannot come to court and question that same process.

9. In the *Kangei Nyakinyua Case* (supra), the Court went further to state that it would only interfere with the outcome of a conciliation process if there was manifest miscarriage of justice or contravention of the Constitution or written law. This in my view is good law as to rule otherwise would render the elaborate conciliation process provided by law completely lame.

10. Having collected the settlement cheque from the County Labour Officer, the Claimant closed his case and to allow him to re-open it would be an abuse of the court process.

11. For the foregoing reasons, I allow the Respondent's application dated 30<sup>th</sup> May 2018 and consequently strike out the Claimant's claim.

12. Each party will bear their own costs.

13. Orders accordingly.

**DATED SIGNED AND DELIVERED AT MOMBASA THIS 31<sup>ST</sup> DAY OF JANUARY 2019**

**LINNET NDOLO**

**JUDGE**

Appearance:

Miss Ang'awa for the Claimant

Miss Onyango for the Respondent