



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT**

**NAKURU**

**CAUSE NO.500 OF 2016**

**GORDON KINOTI ANAMPIU.....CLAIMANT**

**VERSUS**

**ECONOMIC HOUSING GROUP LTD.....RESPONDENT**

**RULING**

By consent, the parties agreed on the principal amount payable to the claimant at ksh.2, 328,244.00 save for costs and interest.

In submissions, the claimant asserts that under section 26 of the Civil Procedure Act the court may order for the payment of costs and interests deemed to be reasonable as due from the date of filing suit to the date a decree is issued. Such costs and interests in this case are due.

In this regard, the claimant was employed on 9<sup>th</sup> February, 2015 and resigned from his employment on 9<sup>th</sup> May, 2016. The respondent sent a computation of terminal dues vide email dated 24<sup>th</sup> May, 2016 for the sum of Ksh.2, 563,004.00 due to the claimant at the end of his employment. The respondent paid Ksh.234, 760.00 in July, 2016. The balance of Ksh.2, 328,244.00 was not paid forcing the claimant to file suit. This has put the claimant into further costs which should be met by the respondent.

The respondent agree that a successful party should be awarded costs but in the event suit is settled by consent, there is no successful party and each should bear own costs. The claimant has not served the respondent with summons to enter appearance as per the orders issued on 28<sup>th</sup> April, 2017 and forced the respondent to rely on the records of the court. interests should not be awarded on the special circumstances tat employment contracts are based on and each party should bear its own costs as the matter has since been settled by consent.

Matters filed with the court as regards costs to be awarded are regulated under section 12(4) of the Employment and Labour Relations Court Act, 2011;

*(4) In proceedings under this Act, the Court may, subject to the rules, make such orders as to costs as the Court considers just.*

Costs awarded by the court are discretionary. However in applying such discretion the court must act judicially to ensure the ends of justice are achieved.

In this regard the claimant filed his claim on 19<sup>th</sup> December, 2016 with regard to his terminal dues and following his resignation from the respondent's employment vides notice dated 26<sup>th</sup> April, 2016 giving a 3 months' notice. Such notice was accepted on 9<sup>th</sup> May, 2016. By email dated 24<sup>th</sup> May, 2016 the respondent was aware of the terminal dues to be paid and in this regard made part payment on 11<sup>th</sup> and 21<sup>st</sup> July, 2016.

The balance due and owing has not been denied save to give a defence that the respondent has been faced with financial difficulties.

On the admission of the substance of the claim vide defence filed on 28<sup>th</sup> April, 2017 the respondent set in motion the taking of hearing directions herein and the court allocated a hearing date and on which date consent in settlement of the matter was recorded.

For the period from 24<sup>th</sup> May, 2016 the respondent was aware that the claimant was owed and entitled to the terminal dues amounting to Kshs.2,328,244.00. Following the settlement of the matter the court cannot go into the reasons for which such monies were not paid in good time. The fact of owing the same is admitted.

The filing of the claim herein was necessitated by the non-payment of the due and owing terminal dues to the claimant by the respondent.

**In view of the above, costs and interests not agreed, the claimant is entitled to the interests' dues on his held terminal dues and costs of the suit. Such interest accrues from 24th July, 2016 to 10<sup>th</sup> December, 2018 when the parties recorded settlement of the matter. Court rates shall apply in the computation of interests.**

**Costs are awarded to the claimant at 50%.**

Delivered at Nakuru this 5<sup>th</sup> day of February, 2019.

**M. MBARU**

**JUDGE**

In the presence of: .....