



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR

RELATIONS COURT AT MOMBASA

CAUSE NUMBER 480 OF 2018

BETWEEN

JOGINDER SINGH DHANJAL.....CLAIMANT

VERSUS

DHANJAL BROTHERS LIMITED.....RESPONDENT

RULING

1. The Claimant filed an Application on 28th September 2018 asking the Court to order the Respondent, and other Directors, to pay the Claimant arrears of salary and allowances, totaling Kshs. 9,892,000.
2. He also seeks an order, compelling the Respondent and other Directors, to continue paying the Claimant a monthly salary of Kshs. 134,600 and allowance of Kshs. 150,000.
3. Lastly, the Claimant seeks an order, to have the Respondent and other Directors, provide to the Claimant benefits he used to receive, before institution of the Claim, including Personal Driver, Security Guards, Petrol, Aquamist Drinking Water, Medicine, and Medical Insurance Cover.
4. The Application is supported by an Affidavit sworn by the Claimant on 28th September 2018.
5. The Respondent filed Grounds of Opposition on 11th October 2018. The Claim is in abuse of the Court Process. The Claim replicates Plaintiff in HC Com. No. 74 of 2017 (MSA) and Winding Up Cause No. 5 of 2014 (MSA). The Claimant voluntarily resigned in an AGM held on 13th April 2017. The Respondent filed a Notice of Preliminary Objection, similar in tone and tenor to the Grounds of Opposition, on 11th October 2018.
6. Parties agreed on 11th October 2018, to have the Application and the Preliminary Objection, considered and determined jointly, on the basis of Submissions.
7. They confirmed filing of Submissions on 21st February 2019.

The Court Finds:-

8. The Claimant avers he was both a Director, and Operations Manager of the Respondent Company.
9. He alleges the resolution of 13th April 2017, removed him as Director and retired him irregularly.
10. The Claims/Suits/Petitions filed at the High Court, seem to relate to the dispute on directorship.
11. The Claim filed herein is confined to the Claimant's role as an Employee of the Respondent. He claims he was employed as the Operations Manager, and pursues salary and allowance in arrears, and damages.
12. Litigation at the High Court is severable from that before the Employment and Labour Relations Court.

13. The Court does not therefore agree with the Grounds of Opposition and Preliminary Objection filed by the Respondent.

14. Proceedings and decisions of the High Court in the various matters relating to the Parties herein, can be used as evidence in the Claim filed before the E&LRC. Conversely, Proceedings and decisions made by this Court may be of evidential value at the High Court. There is no ground however, to determinatively hold that either set of proceedings implicates the principle of *res judicata* or *sub-judice*. Parties should be allowed to prosecute their respective cases. If at a later stage it is shown that similar or same issues have been tried, and determined conclusively by either Court, the relevant Court shall be in a position to give appropriate orders upon review of all available evidence.

15. ***The Preliminary Objection is not merited. It is declined.***

16. The prayers contained in the Claimant's Application dated 28th September 2018, seek substantive orders. The Claimant prays for arrears of salary and allowances. Similar prayers are contained in the substantive Claim.

17. The Claimant needs to prosecute his Claim substantively, establish that he was an Employee of the Respondent, and that his contract was unfairly terminated by the Respondent.

18. This obligation is not adequately discharged through affidavit evidence on record. The Claim needs to be heard in full, for the Court to consider granting arrears of salary, allowances and damages.

19. ***The Application filed by the Claimant on 28th September 2018 is rejected.***

IT IS ORDERED:-

a) The Preliminary Objection raised by the Respondent is rejected.

b) The Application filed by the Claimant on 28th September 2018 is rejected.

c) No order on the costs.

d) Parties shall comply with Rule 15, E&LRC (Procedure) Rules 2016, and endeavor to schedule the main Claim for hearing.

Dated and delivered at Mombasa this 27th day of March 2019.

James Rika

Judge