



**REPUBLIC OF KENYA**

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

**CAUSE NO 62 OF 2017**

**[FORMERLY MOMBASA ELRC CAUSE NO 825 OF 2016]**

**JULIUS AMON MWANDA.....CLAIMANT**

**VS**

**THE COUNTY GOVERNMENT OF KILIFI.....RESPONDENT**

**RULING**

1. On 25<sup>th</sup> September 2018, the parties agreed on a partial consent in the following terms:
  - a) That judgment be entered in favour of the Claimant in the sum of Kshs. 207,040.95;
  - b) That the said sum be paid within 60 days.
2. The parties failed to agree on the issues of costs and interest which are now the subject of this ruling. The parties were to file submissions on the twin issues but none of them complied with these directions.
3. The Court will nevertheless make a determination on the issues before it based on the law and particular circumstances of the case.
4. Section 12(4) of the Employment and Labour Relations Court Act provides as follows:

***(4) In proceedings under this Act, the Court may, subject to the rules, make such orders as to costs as the Court considers just.***
5. Rule 29(2) and (3) of the Employment and Labour Relations Court (Procedure) Rules empowers the Court to order reasonable costs as well as interest on successful liquidated claims.
6. In his claim brought by way of Memorandum of Claim dated 10<sup>th</sup> October 2016 and filed in court on 17<sup>th</sup> October 2016, the Claimant sought salary arrears for the months of April, May, September and October 2015, all totalling Kshs. 171,181.40.
7. In its Replying Memorandum dated 26<sup>th</sup> April 2018 and filed in court on the same date, the Respondent denies withholding the salary arrears and states that the Claimant himself had failed to update his bank account with Standard Chartered Bank (K) Ltd.
8. The Respondent filed correspondence between itself and the Claimant's Bank. The Respondent wrote to the Claimant's Bank on 15<sup>th</sup> November 2016 seeking to establish the actual position regarding the payment of the Claimant's salary. By its letter dated 22<sup>nd</sup> November 2016, the Bank confirmed that the Claimant's salary had been unpaid because his bank account number was invalid. The Claimant did not question the authenticity of this correspondence.
9. Overall, it would appear that this claim would not have arisen had the Claimant exercised some diligence in updating his account and patience in following up the matter with his former employer.
10. For the foregoing reasons, I decline to award the Claimant any costs or interest.
11. It is so ordered.

**DATED SIGNED AND DELIVERED MALINDI THIS 14<sup>TH</sup> DAY OF OCTOBER 2019**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Ole Kina for the Claimant

Mr. Bwire for the Respondent