



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 53 OF 2010

KENYA PLANTATION & AGRICULTURAL

WORKERS UNION

CLAIMANT

v

VAN DEN BERG KENYA LTD

RESPONDENT

RULING

1. The Kenya Plantation & Agricultural Workers Union (Union) instituted legal proceedings against Van Den Berg Kenya Ltd (Respondent) on 28 January 2010 and the Issue in Dispute was stated as *Unfair, unlawful and illegal lock out of Ms. Irene Lorna Maungu* (Grievant).
2. The Cause was registered as Nairobi Cause No. 53 of 2010, *Kenya Plantation & Agricultural Workers Union v Van Den Berg Kenya Ltd*.
3. The Cause proceeded to hearing and in an Award delivered on 7 February 2013, Onyango J, the Court found that the summary dismissal of the Grievant was *harsh* and ordered that to parties agree on the computation of the Grievant's *wages up to time of dismissal, overtime for rest days, accrued leave and pay in lieu of notice*. The Respondent was also ordered to issue the Grievant with a certificate of service.
4. It appears that the parties did not agree on the computations.
5. On 16 June 2017, the Grievant moved Court in Nairobi Misc Cause No. 78 of 2017, *Irene Lorna Maungu v Van Den Berg Kenya Ltd* seeking reconstruction of the file in *Cause 53 of 2010* which was stated to be missing from the registry.
6. The Grievant also sought a review of the Award (for the Court to give directions on the computations (the Grievant computed the same as Kshs 2,192,581/-).
7. When the application was placed before Wasilwa J on 19 June 2017, she directed the Deputy Registrar to produce the file said to be missing, and further that the application be served (the file was made available and, therefore the reconstruction application has been overtaken by events).
8. The application was next placed before Nzioki wa Makau J on 16 October 2017, and after hearing an address from a Union representative, the Judge ordered that the Labour Officer, Naivasha cause the parties to meet and agree on the computations.
9. The parties met before the Sub-County Labour Officer, Naivasha and in a report dated 24 November 2017, the Labour Officer indicated that the parties had agreed to a sum of Kshs 27,541/72.

10. When the file was next before Nzioki wa Makau J on 30 November 2017, the Grievant informed the Court that the parties had agreed and she requested the Court to ask the Respondent to release the sum of Kshs 27,541/72 to her.

11. The Court directed that the application be mentioned on 13 December 2017 in order to give the Respondent an opportunity to address the Court. None of the parties appeared before the Court on the said date.

12. On 6 February 2018, the Grievant appeared before me, and sought an order directing the Respondent to release the agreed sum to her.

13. The Respondent was not in Court, but on record was an affidavit sworn by George Rasugu deposing that he served a mention notice upon the Respondent.

14. Considering that the parties met under the chairmanship of the Labour Officer and agreed on the sum of Kshs 27,541/72, the Court would adopt the said amount of Kshs 27,541/- as the judgment sum due and owing to the Grievant.

15. The Respondent is hereby ordered to pay the said sum to the Grievant within 10 days from today, failure to which the sum will attract interest backdated to the date of award of 7 February 2013, and costs.

16. In default, the Union/Grievant may move Court to execute.

Delivered, dated and signed in Nairobi on this 9th day of February 2018.

Radido Stephen

Judge

Appearances

For Union/Grievant in person

For Respondent served but did not appear

Court Assistant Lindsey