

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF

KENYA AT NAIROBI

CAUSE NUMBER 637 OF 2014

SAMSON OMECHI ONGERA.....CLAIMANT

VERSUS

TUSKER MATTRESSES LIMITED.....RESPONDENT

RULING

1. The dispute which triggered the application dated 31st July 2017 seem to be over what constitutes the base figure of salary to be used in computing the 9 month salary awarded to the claimant by the judgement of the court delivered on 17th February 2017. The court once delivers its judgment became *functus officio* and can only review or set aside the judgement if parameters set out under rule 33 of the court rules are satisfied. The court cannot at this point entertain new issues.

2. Under section 49(1) (c) where the court finds that an employee has been unfairly terminated the court can award up to twelve month's salary as compensation based on gross monthly salary of such employee. Gross monthly pay comprises of basic pay together with house allowance but does not include other work dependent allowances such as bonus or car allowance and overtime. The payment as a matter of law is subject to statutory deductions and taxes.

3. The claimants gross pay as at the time of termination of his service was Kshs.17,233.15. This should therefore form the basis for computing the nine months salary compensation awarded by the court.

4. It is so ordered.

Dated at Nairobi this 2nd day of March 2018

Abuodha J. N.

Judge

Delivered at Nairobi this 2nd day of March 2018

In the presence of:-

..... for the claimant

..... for the Respondent

Abuodha J. N.

Judge