



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

DAVIES OMONDI.....CLAIMANT

VERSUS

XPLICO INSURANCE COMPANY LIMITED.....RESPONDENT

RULING

Introduction

1. The application before the Court is the claimant's Notice of motion dated 23.4.2018. It seeks for an order that the respondent forthwith pays the claimant the sum of Kshs.839,388 being the undisputed salary arrears for April, May, June and July 2017. The summary of the applicant's case is that although he worked during the said period the respondent failed to pay his salary prompting him to resign from the job. The application is supported by the applicant's own affidavit sworn on even date. The application has not been opposed by the respondent despite service.

Analysis and Determination

2. After careful consideration of the application and the affidavit in support, the issues for determination:

- (a) Whether the application is properly before the Court;
- (b) Whether the application has merits.

Status of the Application

3. The suit before the Court seeks the following reliefs:

- (a) A declaration that the Claimant's forced resignation amounted to constructive dismissal.
- (b) A declaration that the dismissal was unfair and unlawful
- (c) An award of damages made up as follows;
 - (d) (i) An order for compensation for general and exemplary damages for harassment, Financial constraints, intimidation and resultant psychological stress; in the alternative and without prejudice to the aforementioned:
 - (ii) Compensation for unfounded accusations, defamation/slander, redundancy and/or engineered impoverishment and/or in the alternative, for diminished employability.
- (e) Any claim that may be outstanding from the application
- (f) Costs of the suit
- (g) Any other relief that the Court may deem fit to grant.

4. Although vide paragraph 7(d) of the Memorandum of Claim the applicant has pleaded that his salary for April to July 2017 was not paid, the said debt is not specifically pleaded. Respectfully therefore I find that the application before me is not well founded on the suit. It is therefore struck out for being improperly before the Court. However, the claimant is at liberty to bring a similar application in future should

he amend the claim to plead for the orders sought by the application.

Disposition

5. For the reason that the order sought is untenable, for want of consonance with the reliefs sought by the main suit, I will not consider the application on its merits. It is therefore struck out with no order as to costs.

Dated, Signed and Delivered in Open Court at Nairobi this 18th day of May, 2018

ONESMUS N. MAKAU

JUDGE