



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1575 OF 2017**

**ABDINOOR ROBA YATTANI.....CLAIMANT**

**VERSUS**

**ECO OIL KENYA LIMITED.....RESPONDENT**

**RULING**

**Introduction**

1. The application before me is the claimant's Notice of Motion dated 23.3.2018. It seeks for entry of partial Judgment in terms of prayer 1 of the claim namely salary arrears amounting to Kshs.834,685. In the alternative, the application seeks for the said sum to be deposited in an interest earning account jointly held by the Advocates for the two parties herein. The application is supported by the claimant's own affidavit. The application is not opposed. Instead, the respondent's counsel has filed an application seeking leave to cease from acting for the respondent. The application by the defence counsel has however not yet been fixed for hearing.

**Claimant's Case**

2. The Claimant brought this suit on 7.8.2017 seeking to recover among other things, Kshs.834,685 being the unpaid salary for August 2016 to January 2017. He now prays for Judgment to be entered for him as prayed in prayer 1 of the claim or in the alternative the said sum be deposited in an interest earning account in the joint names of the counsel for the two parties pending trial because the respondent has admitted that the salary was not paid and the company is financially unstable. The claimant has urged that unless the order is granted, the respondent may go under before the trial in which case any future judgment will be rendered a mere paper.

**Analysis and Determination**

3. The issue for determination is whether the orders sought should be granted. I have considered pleadings filed by both sides. The claimant averred that this salary for September to January 2017 was not paid and the respondent admitted the same in paragraph 4 of her defence. The salary pleaded by the claimant is Kshs.165,400 but in his witness statement cities his net salary as Kshs.120,000. The total net salary outstanding for the said 5 months is thereof Kshs.600,000 and not Kshs.834,685 sought by prayer 1 of the claim. The said Kshs.600,000 is salary already earned by the claimant and according to the claimant and the respondent, it fell into arrears due to low business on the part of the respondent. The claimant now fears that if the undisputed salary is not paid or deposited as security for performance, the suit may be rendered nugatory if the respondent goes under before judgment of the Court.

4. After careful consideration of the undisputed salary arrears, I find merit in the claimant's application. In addition, I find the claimant's fears about the suit being rendered nugatory justified considering the respondent's unstable financial history. Consequently, I enter judgment in favour of the claimant, against the respondent in the sum of Kshs.600,000 being salary for September 2016 to January 2017. The said sum shall be deposited in Court within 21 days of this Ruling and it shall remain there until the final determination of the suit.

**Disposition**

5. The Notice of Motion dated 23.3.2018 is allowed subject to the directions given above.

**Dated, Signed and Delivered in Open Court at Nairobi this 8th day of June, 2018**

**ONESMUS N. MAKAU**

**JUDGE**