



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE. NO. 1727 OF 2013

PHILIP PETER KERECHA.....CLAIMANT

VERSUS

SPACE SELLERS LIMITED.....1ST RESPONDENT

VISION BUREAU OF INVESTIGATION LIMITED.....2ND RESPONDENT

JUDGMENT

Introduction

1. The Claimant was employed by the first respondent from 7.3.1987 as a driver and worked until 1.6.2011 when he was retrenched. His send off benefits were agreed at Kshs.581,420 but only a portion of it was paid leaving a balance of Kshs.155,354. He therefore brought this suit to recover the same plus costs and interest. However the first respondents denied liability and averred that she had paid the claimant more than the agreed Kshs.581,420.

2. On 6.3.2017 and 8.5.2017, the first respondent paid Kshs.110,000 and Kshs.45,354 respectively. Despite the payment of the whole debt, the claimant interest on the sum paid plus costs of the suit. The Court directed parties to file written submission on the disputed costs and interests.

Analysis and Determination

The issues for determination are:

- a. Whether the claimant should be paid costs of the suit.
- b. Whether the claimant is entitled to interest on the Kshs.155,354 after being paid before trial.

Costs of the suit

4. Costs are at the discretion of the Court. The said discretion must be exercised judiciously in favour of the successful party. In this case, the parties agreed on a send off package of Kshs.581,420 but the first respondent paid part of it leaving Kshs.155,354 outstanding. Despite demand through counsel, the respondent neglected to pay the said sum. Even after the suit was filed the respondent filed a defence denying the debt and the matter dragged until 6.3.2017 and 8.3.2017 when the respondent paid the whole sum as prayed in the suit. In my view the suit was not necessary had the first respondent paid the debt. I therefore find and hold that the claimant is entitled to costs to be agreed on or taxed.

Interest

5. There is no dispute that the whole debt sought by the suit was paid on 6.3.2017 and 8.5.2017 by instalments of Kshs.110,000 and 45,354 respectively. That was after filing the suit on 25.10.2013. There is further no dispute that the first respondent filed defence denying the debt only to change her mind 4 years after filing of the suit and paid. The purpose of the Court is to do justice to all the parties. In economics, the basic rule on debts is that, the cost of waiting is interest. In this case, the respondent forced the claimant to wait for his debt for almost 4 years after filing this suit. It is therefore fair and just to award interest on the Kshs.155,354 to the claimant. The interest shall be at the court rates from the date of filing the suit till 8.5.2017.

Conclusion and Disposition

6. For the reasons stated above, I enter judgment for the claimant awarding him costs of the suit and interest on the suit debt at Court rates from the date of filing suit.

Dated, Signed and Delivered in Open Court at Nairobi this 31st day of July, 2018

ONESMUS N. MAKAU

JUDGE