

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1228 OF 2017

(Before Hon. Justice Hellen S. Wasilwa on 26th September, 2018)

ENOS OTIENO AUCH.....CLAIMANT

VERSUS

EAST AFRICAN PORTLAND CO. LTD.....RESPONDENT

RULING

1. The Parties herein entered a consent before this Court on the amount payable in the claim which amount was paid out by the Respondent to the Claimant. The Parties failed to agree on the issue of costs. They also agreed that they will submit on the issue of costs for the Court to determine.
2. The Respondent submitted that they were willing to resolve this issue from the onset save that the Claimant had not cleared with the Respondent. The Respondents also submitted that there was actually no triable issue save for issue of payment of terminal dues which they were all along willing to settle. They therefore want this Court to exercise its discretion and decline to grant costs.
3. The Claimants on their part insisted that costs were payable. They cited Section 12(4) of Employment & Labour Relations Court Act which provides that:-

“In proceedings under this Act, the Court may, subject to the rules, make such orders as to costs as the Court considers just”.

4. I note that under Section 12(4) of Employment & Labour Relations Court, the issue of costs is a discretionary issue and is dependent upon the conduct of the parties, subject of litigation and circumstances that led to the institution of the proceedings. The Court has the power to award costs but the discretion must be exercised judiciously.
5. I note that the Claimant decided to file this claim after the Respondent failed to pay him his terminal dues 5 months later. Indeed the Claimant was entitled to the dues.
6. When the Respondent did not pay as expected, the Claimant filed this claim. The Claimant has subsequently incurred costs due to the omission of the Respondent. Whereas the Respondent finally acted prudently and resolved the issue by consent, the costs already incurred by the Claimant cannot be wished away. It is my finding that the conduct of the Respondent was in bad faith for delaying to pay Claimants dues hence this claim.
7. I therefore find that the Claimant is entitled to payment of costs either to be agreed upon or to be taxed by the Deputy Registrar (DR). Those are the orders of this Court.

Dated and delivered in open Court this **26th day of September, 2018.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Odaga for Respondent – Present

Claimant – Absent