



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO 933 OF 2015

GILBERT MOKAYA OMBUKI.....APPLICANT

VS

KENYA PORTS AUTHORITY.....RESPONDENT

RULING

1. By a Notice of Motion dated 13th June 2018 and filed in court on even date, the Applicant seeks the following orders:

- a) That the Court be pleased to give directions for the purpose of execution of the decree herein;
- b) That the Court be pleased to provide an interpretation of the relief in paragraph 33 of the judgment where the Court declared that the Applicant's dismissal was irregular and unfair;
- c) That the Court be pleased to provide an interpretation on the relief in paragraph 34 where the Court directed the Respondent to calculate and pay to the Applicant the dues available to him under his contract of employment.

2. The application, which is supported by the Applicant's affidavit sworn on 13th June 2018, is based on the following grounds:

- a) That by the judgment of the Court delivered on 23rd February 2016, the Court set out relief in paragraphs 33 and 34 thereof, in addition to costs;
- b) That upon taxation of the costs, the Applicant issued a ten day notice to the Respondent whose reply made it necessary to file the present application;
- c) That the Applicant wishes to draw the attention of the Court to Sections 35(1)(c),(4)(a),(5),49(a) and (c)(4)(f)(h)(m) of the Employment Act.

3. The Respondent's response is contained in a replying affidavit sworn by the its Principal Legal Officer, Lilian Kamau on 9th July 2018. She depones that pursuant to the judgment delivered by the Court on 23rd September 2016, the Respondent tabulated the dues owed to the Applicant as per his contract of employment in accordance with the judgment.

4. Kamau further depones that the Applicant's demands as contained in his letters dated 23rd October 2017 and 9th April 2018 are baseless and unjustified since the said claims were neither prayed for by the Applicant nor were they awarded by the Court.

5. The Respondent sets out the dues owing to the Applicant as per his contract of employment as follows:

- a) Leave allowance (upon termination as at 26/04/2005).....Kshs. 18,000
- b) 3 months' salary in lieu of notice @ Kshs. 32,930.....98,790
- c) Half salary withheld during interdiction.....73,950
- d) Costs of the suit as taxed.....196,365

Total.....387,105

6. The Respondent remains ready and willing to release this amount to the Applicant. Any pension dues are payable by the Kenya Ports Authority Pension Scheme which is a separate entity independent of the Respondent.
7. The Respondent terms the Applicant's attempts to draw the attention of the Court to Sections 35(1)(c),(4)(a),(5),49(a) and (c) (4)(f)(h)(m) of the Employment Act as a second appeal, since all the contentious issues of law and fact were duly determined by the Court in its judgment issued on 23rd September 2016.
8. By his application, the Applicant seeks interpretation of paragraphs 33 and 34 of the judgment delivered by my brother **Makau J** on 23rd September 2016. These paragraphs contain the reliefs granted to the Applicant by the Court.
9. In his oral submission before me on 11th July 2018, the Applicant took issue with the fact that he was not granted compensation for unfair termination in spite of the finding by the Court that his termination was irregular and unfair. The Applicant further states that he is entitled to salary for the remainder of his contract of employment.
10. These are not matters for clarification. What the Applicant seeks are prayers that were not granted by the Court in its judgment on 23rd September 2016. The Court cannot sit on appeal over its own decisions. If the Applicant is dissatisfied with the reliefs granted by my brother Judge, he can only pursue a second appeal in the court of Appeal.
11. For this reason, the Applicant's application dated 13th June 2018 is declined. Each Party will bear their own costs.
12. Orders accordingly.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 20TH DAY OF SEPTEMBER 2018

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JUDGE

Appearance:

Gilbert Mokaya Ombuki (the Applicant in person)

Miss Kamau for the Respondent