



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE 1421 OF 2017**

**MAY MURAGE.....CLAIMANT**

**VERSUS**

**WANANCHI GROUP KENYA LIMITED.....RESPONDENT**

**RULING**

1. The claimant filed a Notice of Motion dated 20<sup>th</sup> July, 2017 seeking orders among others that:

a. That this honourable court do issue an order compelling the respondent to pay the withheld/deducted sum of Kenya shillings One hundred and Fifty Seven thousand, Two Hundred and Forty Eight (Kshs 157,248) to the applicant pending the hearing and determination of this claim filed herewith.

b. That this honourable court do issue an order compelling the respondent to issue the applicant with a certificate of service pending the hearing of this claim.

2. The application was based on the grounds that:

a. *The applicant has been an employee of the respondent company for three years.*

b. *On the 26<sup>th</sup> of April, 2017, the applicant received a notification from her bank indicating that their account had been credited by the respondent.*

c. *That total amount inclusive of the salary was Kenya shillings Two hundred and Sixty Seven Thousand, Nine Hundred and Seventy Nine(Kshs 267,979/=)*

d. *The applicant sought clarification on the said amounts from the Human Resource Manager and the Payroll officer.*

e. *That the Human Resource Manager informed her categorically that the same was her bonus payment which had been duly approved by her boss one Mr. Michael Dabaly.*

f. *It was thus crystal clear that the bonus payments were made by the respondent intentionally, unconditionally, without any solicitation whatsoever by the applicants and in full and with the expectation of the applicant utilizing the same without any reference to anyone.*

g. *The applicant was grateful to the respondent company for the kind gesture and thus applied and appropriated the same to her needs in the full knowledge that it was her surplus income.*

h. *However two months down the line, on the 12<sup>th</sup> day of June 2017, while the applicant was clearing with the respondent company in order to access her lay terminal layoff dues which had arisen after the respondent declared her position redundant, the Human Resource manager without any colour of right whatsoever, informed her that the said bonus was to be deducted from her dues.*

3. The respondent opposed the application and filed a replying affidavit through one Dismus Omondi in which he deponed among others that:

a. *The respondent's employment contracts provide for incentives in form of bonuses or commissions and not both. In essence, all*

employees whose contracts provide for payment of commissions are not entitled to receive bonuses and vice versa. All employees who were entitled to receive bonuses were and are notified by letters prior to or during disbursement of the bonus payment.

b. It is true that the claimant joined the respondent on 2<sup>nd</sup> May, 2014 as a Sales Lead Analyst –Cable, a position she served in until she was appointed as a Business Development Lead-New projects as stated in a letter dated 19<sup>th</sup> July, 2016.

c. He contract of employment did not provide for payment of or entitlement to bonuses. The payment of bonuses to any employee, including the claimant, was and is part of the respondent’s scheme for incentivizing its employees. Incentives by the respondent are structured into bonuses or commissions and are based on performance and evaluations.

d. Prior to her promotion vide the letter dated 19<sup>th</sup> July 2016, the claimant was paid two bonuses since in her old position she was eligible to receive bonuses based on evaluations of her performance. In fact, she did receive two bonuses as indicted in the letters dated 20<sup>th</sup> March 2015 and 29<sup>th</sup> April, 2016.

e. However, in her new enhanced position of Development Lead-New Projects (starting 19<sup>th</sup> July, 2016) which is a senior position she was eligible to and did receive commissions that were based on the targets that she achieved. She was not entitled to and could not receive bonuses since she was already enjoying commissions.

f. Indeed, the claimant was paid all commissions that she had earned and this is indicated in her payslips.

g. Unfortunately, on or about 26<sup>th</sup> April, 2017 the respondent while paying out bonuses to employees who receive bonuses, but are not entitled to commissions, mistakenly transferred a total of Kenya shillings Two Hundred and Sixty Seven Thousand, Nine Hundred and Seventy Nine (Kshs 267,979/=) to the claimants account. This amount was transferred in error.

h. The claimant’s allegation that the Human Resource Manager and payroll officer informed h that the amounts had been approved by Mr Michael Dabaly is untrue. This mistake was noticed during the ongoing restructuring and audit of the respondent’s payroll, operations and staff, where it was discovered that the claimant and other employees who were not entitled to bonuses were in fact mistakenly paid.

i. On realizing the mistake, the respondent promptly informed the claimant and all affected employees of it and advised that a rectification would be made with the respondent recovering the wrongly transferred amounts from the claimant’s terminal payments. This exercise affected all employees whose accounts were credited mistakenly.

4. The court has reviewed and considered the prayers sought in the application as well as the replying affidavit of the respondent especially on the issue whether the claimant after promotion was entitled to only commission but not bonuses and became of the view that the matter can only be resolved after a full trial on merits.

5. It would not be appropriate to make an order that the withheld amount which is equivalent to the amount the respondent claims was paid erroneously to the claimant be released to her.

6. The court therefore disallows the application and directs that the issue be considered with the rest of the claim at the full trial.

7. It is so ordered.

Dated at Nairobi this 5<sup>th</sup> day of October, 2018

**Abuodha Jorum Nelson**

**Judge**

Delivered this 5<sup>th</sup> day of October, 2018

**Abuodha Jorum Nelson**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.