



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CLAIM NO. 219 OF 2016

(Before Hon. Justice Mathews N. Nduma)

PHAISAL MOHAMMED BANDO.....CLAIMANT

VERSUS

KASKAZI NETWORK LIMITED.....RESPONDENT

J U D G M E N T

1. The Claim before court is for:-

(a) Compensation in the sum of Kshs.144,000 in respect of work injury claim subjected to occupational safety and Health Officer and duly assessed at that amount and

(b) equivalent of six (6) months compensation in the sum of Kshs.90,000 being unpaid salary for the time the Claimant was under treatment whilst still an employee of the Respondent.

2. The claim was duly served on the Respondent and affidavit of service sworn by Daniel Kombo Omukoko, a duly authorized process server was filed in court on 15th December, 2016.

3. The Respondent failed to enter appearance nor file a statement of defence.

4. The fact of employment of the Claimant by the Respondent as a sales person of cardbury products to retail shops on motor bike between the period 15th July, 2014 and 10th March, 2015 is not in dispute.

5. The Claimant had a road accident in the cause of duty on 10th March, 2015. The motorbike was hit from behind by a saloon car. The Claimant sustained injuries and was treated at Ngalasia dispensary and Bungoma Hospital and was given one month and 14 days off to recuperate. The Claimant was not paid any salary for this period. He was kept in Limbo at home. After 3 months the Respondent told him to go to Nairobi where he filed the WIBA, injury form. The Claimant's disability was assessed at 10 % and recommendation for payment of Kshs.144,000 by the company was made.

6. The Claimant seeks enforcement of this payment which is long overdue. The Claimant was on sick leave for six months and claims payment of six months arrear salary which claim is not defended.

7. Accordingly, the court finds that the claim for payment of arrear salary for six (6) months in the sum of Kshs.90,000 has been proved on a balance of probabilities and the court awards the Claimant accordingly.

8. In the final analysis, the court enters judgment in favour of the Claimant as against the Respondent as follows:-

a) Kshs.90,000 being six (6) months arrear salary not paid whilst the Claimant was recovering from injuries and still in the employ of the Claimant.

b) An order to enforce payment of compensation duly assessed under WIBA in the sum of Kshs.144,000 by the Respondent within 14 days of this Judgment.

c) Interest on the ward in (a) above at court rates from date of filing suit till payment in full.

d) Costs of the suit.

Judgment Dated, Signed and delivered this 6th day of December, 2018

Mathews N. Nduma

Judge

Appearances

Mr. Omuchungu for Claimant

Chrispo – Court Clerk