

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NO. 1355 OF 2015

ROBERT NYAGAKA.....CLAIMANT

VERSUS

EASY COACH LIMITED.....RESPONDENT

RULING

1. By a motion dated 5th August, 2015, the claimant seeks among others that he be paid his salary and benefits per the letter dated 30th January, 2015 pending the hearing and determination of the suit herein.
2. In her submissions in support of the application, Ms Makori stated that by a letter dated 30th January, 2015 the respondent stated that the claimant was entitled to terminal dues details of which were set out in the letter. The claimant was only paid January salary and has never been issued with a certificate of service.
3. According to Counsel under section 18 (4) of the Employment Act an employee who has been dismissed, is entitled to be paid all moneys and allowances due to him upto to the date of his dismissal. Ms Makori further submitted that the respondent in their response had not addressed why they had not paid the claimants dues.
4. The respondent in opposing the application submitted through Mr Munene that the application was premature given that his client had not filed a response to the claim. According to Counsel, the respondent does not deny owing the claimant terminal dues as itemized in their letter but was however reluctant to settle the amount on account of money paid by the respondents on behalf of the claimant as cash bail at Nandi Magistrate's Court. Counsel therefore submitted that the terminal dues sought by the claimant should be subject to deduction of Kshs 100,000 advanced to the claimant on account of bail.
5. The offer to pay the claimant his terminal dues as detailed in the letter dated 30th January, 2015 was unequivocal. All the claimant needed to have done before he was paid was to surrender all the company property in his possession. The respondent is therefore obliged to make the payment as represented in their letter of 30th January, 2015.
6. Cash bail is not a forfeiture of money to the state. It is refundable at the conclusion of the trial or can be applied to offset any fine imposed. The respondent has a lien on the cash bail and has a right to claim back the same from court upon the conclusion of the claimant's case. If it be that the claimant was acquitted of the criminal charges and claimed for his own benefits the cash bail, then the respondent is entitled to deduct the same from the terminal dues payable to the claimant.
7. In conclusion the application is allowed to the extent and on terms set out above.

It is so ordered.

Dated at Nairobi this 10th day of February 2017

ABUODHA JORUM NELSON

JUDGE

Delivered this 10th day of February 2017

ABUODHA JORUM NELSON

JUDGE