



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI
CAUSE NO.556 OF 2014

PETER NJUGUNA KAMAU CLAIMANT

VERSUS

SPRY ENGINEERING COMPANY LIMITEDRESPONDENT

RULING

The Claimant, through application filed on 17th December, 2014 is seeking for orders that judgement be entered for the sum of Kshs.123,033.00 which the Respondent has admitted in response to claim and that the sum be released to the Claimant pending the hearing of the main suit.

The application is supported by the annexed affidavit of the Claimant and on the grounds that the Respondent in the response to claim filed on 18th June, 2014 has admitted owing the Claimant the sum of Kshs 123, 033.00 as he is a family man and impecunious for reasons of being jobless following work frustrations by the Respondent and forcing the Claimant to tender his resignation with the respondent.

That since filing the claim the Respondent has admitted to owing part of the claimed dues which should be paid pending hearing of the main claim as the Claimant shall suffer irreparable loss and damage if the orders sought are not granted.

The Claimant in his affidavit avers that he was forced by the Respondent to tender his resignation as a result of frustrations at work and since, his terminal dues have not been paid.

In reply the Respondent filed Grounds of Opposition and states that the application by the Claimant is an abuse of the Court process and since the claim is based on the same set of facts as the main suit it is only fair that the main suit be heard. The Claimant is not entitled to costs and the application is incompetent and unnecessary.

The respondents advocate, Arthur Ingutya also filed Replying Affidavit and avers that the application by the Claimant is filed in bad faith as he was offered but declined to accept the amount of Kshs.123.033.00. the offer was made on the basis that the Claimant was a casual employee and where the sum of Kshs.123, 033.00 is found acceptable the Claimant must withdraw the suit.

Both parties filed written submissions.

Determination

The basis of the application is that the Respondent has admitted to owing the Claimant Kshs.123, 033.00 which should be paid pending the hearing of the main claim as the Claimant is jobless and requires such

monies to support his family. In defence, at paragraph 3 the Respondent avers that;

The Respondent shall at all times maintain that the Claimant was entitled to no more than Kshs.123, 033 which was offered to him but he declined to accept.

In the Replying Affidavit to the application sworn by Arthur Ingutyia and dated 19th January, 2015 is attached a letter dated 16th June, 2014 where the respondent's advocates states on a "without Prejudice" basis that;

Our client admits and is prepared to pay yours the sum of Kshs.123, 033 ... being salary arrears inclusive of overtime pay. ... Please let us have confirmation that your client is ready to accept the said sum in full and final settlement of the claim.

The above communication is shared on a purely without prejudice basis and in any event it is conditional to the settlement of the entire claim. On 22nd August, 2014, the claimants advocate Respondent and declined the offer and proposal to accept the sum of Kshs.123, 033.00 from the respondent.

In the Memorandum of Claim filed on 4th April, 2014 the issue in dispute as registered is that the Respondent failed to pay terminal dues of;

- a. House allowance at Kshs.59,400.00*
 - b. Unpaid salary for 11 months Kshs.396,000.00*
 - c. Overtime Kshs.9,900.00*
- Total claim Kshs.465, 300.00*

I take it by refusal to accept the offer by the respondent; the Claimant took into account his claims as above.

I find no admission of the claim by the respondent, the offer to pay Kshs.123, 033.00 was purely on a without prejudice basis and the same was rejected thereof. To grant the orders sought on this basis would be to prejudice the Respondent and make judgement before the merits of the main claim can be gone into.

Application dated 17th December, 2014 is hereby declined. Parties shall be allocated a hearing date for the main cause at the registrar. Costs in the cause.

Dated and delivered in open Court at Nairobi this 9th day of February, 2017.

M. MBARU

JUDGE

In the presence of:

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