

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 171 OF 2016

DANIEL GATOBU.....CLAIMANT

VERSUS

MERU CENTRAL DAIRY CO-OPERATIVE UNION LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 28th July, 2017)

JUDGMENT

The claimant filed the memorandum of claim on 11.08.2016 in person. He prayed for judgment against the respondent for orders:

- a) To be furnished with calculations of his benefits.
- b) For the payment to be effected in 7 days from the date of judgment.
- c) For payment with interest at court rates.
- d) Costs.

It is not in dispute that the respondent employed the claimant on 01.09.1983 as a permanent labourer. The claimant rose through the ranks and retired on 31.11.2015 upon attaining 55 years age of retirement and as per the contract of service. At retirement the claimant held position of sales supervisor. By the letter dated 26.12.2015 the claimant signed that he had received Kshs.560, 142.00 and the respondent owed him no other benefits apart from the pension earned up to 2007 that would be provided at a later date. By the letter dated 24.06.2016, the claimant requested the respondent to provide the tabulation of terminal dues. He stated that he had been employment from 01.09.1983 to 31.11.2015 and despite the request he had not been provided with the computation of the retirement benefits. The respondent failed to provide the computation and the respondent filed the present suit.

The respondent filed a defence to the suit on 23.09.2016 through Mwenda Mwarania, Akwaslu & Company Advocates. The respondent prayed that the suit be dismissed as it was in bad faith. In particular the respondent admitted the employment history but denied that the claimant had delivered the letter requesting for the computation and no demand had been made prior to filing of the suit. The computation of the dues had been ready since 23.11.2015 prior to the payment of the Kshs.560, 142.00 and the statement of the outstanding dues would be available from the NSSF.

On 30.03.2017 the claimant filed submissions alleging that he was not paid Kshs.1, 696,900.00 which he was entitled to under clause 19(ii) of the collective agreement. The respondent opposed the claimant's submissions by filing submissions on 31.05.2017 and urging for orders that the main claim per statement of claim dated 20.07.2016 had been satisfied by payment of Kshs. 246, 883.90 and the same should be recorded as a judgment in the suit. It is submitted for the respondent that the claimant is bound by the pleadings and the submission about the claims under clause 19(ii) of the collective agreement go outside the claimant's pleadings and should be disregarded.

As per proceedings of 12.05.2017, the claimant consented that the respondent had provided the computation except that payments made do not include 2 months pay for each completed year of service

per the collective agreement. It is the court's view that the only issue for determination is whether the claimant is entitled to the pay under the collective agreement.

The respondent's case is that the issue is outside the pleadings. The respondent further states that there is no evidence before the court to show that the claimant was a member of the trade union and therefore entitled to the benefits under the collective agreement. The court finds in terms of the submissions made for the respondent. The computation has been provided as prayed for and the court returns that the suit stands determined. Even if the pleading is considered to cover payments for unpaid dues under the collective agreement in terms of the prayer for payment in 7 days from the judgment, the court returns that the claimant has not established that he was a member of the trade union and therefore could benefit from provisions of the collective agreement.

The court has considered the parties' margins of success and the subsequent further payments the respondent made to the claimant and returns that each party will bear own costs of the suit.

In conclusion judgment is hereby entered for parties that the suit is determined with orders that each party to bear own costs of the suit.

Signed, dated and delivered in court at **Meru** this **Friday, 28th July, 2017**.

BYRAM ONGAYA

JUDGE