



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.1518 OF 2011

DAVID MBUGUA NGUGICLAIMANT

VERSUS

REGISTEED TRUSTEES OF THE PRESBYTERIAN

CHURCH OF EAST AFRICA.....RESPONDENT

RULING

The respondent, Registered Trustees of the Presbyterian Church of East Africa by application dated 28th January, 2014 and seeking for orders that;

- a) The court be pleased to give further directions on and/or review the judgement delivered on the 7th of May, 2013.*
- b) Pending hearing of the hereinabove, there be a temporary stay of execution of the judgement herein.*
- c) Costs be provided for.*

The application is supported by the affidavit of A N Thangei advocate for the respondent and on the grounds that the claimant in the judgement of 7th September, 2013 had claimed for reinstatement to employment and in the alternative for payment of 12 months' salary as compensation for unfair termination, severance pay, notice pay and unpaid allowances. Both parties were heard and the court delivered judgment. The orders made are for the respondent to pay compensation for Kshs.662, 870.00; notice pay of Kshs.198, 861.00; unpaid allowances Kshs.500, 000.00 and all amounting to Kshs.1, 361,731.00.

The amount of Kshs.342, 793.00 was paid to the Kenya Revenue Authority as PAYE. Notice pay had been paid at kshs.198, 861.00 and upon judgement the respondent paid Kshs.820, 077.00 to the claimant. To thus pay the total amount claimed at kshs.1, 361,731.00 would be double punishment and prejudicial to the respondent. The judgement should thus be reviewed.

In reply the claimant filed a Replying Affidavit dated 12th February, 2014.

Both parties filed written submissions.

The claimant in reply submits that on 17th May, 2013 the court entered judgement herein and awarded the claimant as follows;

<i>Compensation at</i>	<i>kshs.662, 870.00</i>
<i>Notice pay</i>	<i>Kshs.198, 861.00</i>
<i>Unpaid allowances</i>	<i>Kshs.500, 000.00</i>
<i>Total</i>	<i>Kshs.1, 361,731.00</i>

On the respondents application there is assertion that a PAYE amount of Kshs.342, 793.00 was paid and that Kshs.198, 861.00 was as notice pay.

There is no proof of the payment of notice pay of kshs.198, 861.00 as alleged.

By decree obtained on 13th December, 2013 the respondent was ordered to pay the total sum and three instalments have been paid as follows;

Decretal sum Costs taxed Less paid Less taxes Less costs Interest to date Due

Kshs.1, 361,731.00

Kshs.174, 956.00

Kshs.820, 000.00

Kshs.342, 973.00

paid Kshs.174, 956.00

Kshs.95, 403.84

Kshs 294, 161.84

Determination

The court will review its orders, judgement or ruling where there is discovery of an important matter which was not within the knowledge of the person so as to be produced before judgement was read. Also the court will review its judgement where there is a misstate or error apparent on the record, there is breach of the law, there is need for clarification or where there is a sufficient cause or reason that warrant the court to review the orders made. The process on how to make application in this regard is regulated under the Court Rules, the Employment and Labour Relations Court (Procedure) Rules, 2016 and at the time the subject application was filed, the applicable Rules were the Industrial Court (Procedure) Rules, 2010.

It is trite that all employment dues paid to an employee are subject to statutory deductions. Section 49(2) read together with section 19 of the Employment Act, 2007 every employer is required to make all lawful deductions from an employee salary.

PAYE deductions is therefore lawful and a mandatory requirement on every employer.

Noting the above, the averment by the respondent that notice pay of Kshs.198, 861.00 has been paid to the claimant is a matter of evidence. No evidence is attached to confirm payment of the notice pay ordered by the court. Where such an amount was paid before judgement read on 17th May, 2013, such are matters the court was not appraised and thus not part of the court record.

On the costs assessed and due and part of the decree issued by the court, parties attended before the taxing master and the due amounts are within the knowledge of the respondent. I find no sufficient matter for the

court to review its judgement and orders of 17th May, 2013.

Accordingly, application by the respondent is without merit and the same is dismissed with costs to the claimant save that parties shall attend before the taxing master for assessment of the due costs payable to the claimant to date.

Dated and delivered in open court at Nairobi this 27th day of July, 2017.

M. MBARU JUDGE

In the presence of:

Lillian Njenga and David Muturi – Court Assistants