



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

CAUSE NO. 263 OF 2016

**BOARD OF TRUSTEES, NATIONAL WATER
CONSERVATION & PIPELINE CORPORATION**

(NWPC) SUPERANNUATION SCHEME

CLAIMANT

v

ELDAMA RAVINE WATER & SEWERAGE

COMPANY LIMITED

RESPONDENT

JUDGMENT

1. The Board of Trustees, National Water Conservation & Pipeline Corporation (NWPC) Superannuation Scheme (the Trustees) sued the Eldama Ravine Water & Sewerage Co. Ltd (Respondent) on 11 July 2016 and the issue in dispute was stated as Failure by the Respondent to remit its and the employee's pension contribution to National Water Conservation and Pipeline Corporation (NWPC) Staff Superannuation Scheme.
2. According to an affidavit of service sworn by Wycliffe Shikuku M'Mada, the Respondent's advocate on record was served through registered post.
3. On 5 August 2016, the Respondent filed in Court a letter dated 28 July 2016 acknowledging receipt of the Summons and the fact that it has failed to remit the pension contributions. The Respondent also sought for more time to conclude consultations with a view to settling the pension arrears.
4. On 14 December 2016, the Respondent entered a Memorandum of Appearance on 14 December 2016 through Limo R.K. & Co. Advocates. However, no Response was filed.
5. On 28 February 2017, the Court scheduled the hearing of the Cause for 28 March 2017 and directed that a hearing notice be served.
6. The Respondent was not represented however, during the hearing.
7. One of the trustees, Lucas Ngiela Angira testified on behalf of the trustees.
8. He stated that each of the Respondent's employee's/member were to contribute 7.5% of their basic salary, while the Respondent was expected to contribute the equivalent of 15% of each employees/members basic salary to the Scheme.

9. He also testified that the Respondent had been deducting the contributions from the employees but had failed to remit the same to the Trustees and that after discussions, the Respondent had agreed to remit Kshs 100,000/- per month, but had renege on the promise.

10. The witness further stated that in terms of section 53(a)(iii) of the Retirement Benefits Amendment Act, 2006, a compounded interest of 3% per month on unremitted contributions was to be applied, as a penalty.

11. In the Memorandum of Claim, the trustees were seeking Kshs 7,479,072/83 being the unremitted contributions from employees of the Respondent who are/were members of the Scheme.

12. One of the exhibits produced in Court was a letter dated 28 July 2016 (*referred to in paragraph 4 above*) in which the Respondent acknowledged receipt of Court Summons and seeking for more time to sort out settlement of the unremitted contributions.

13. The Trustees case being unchallenged/uncontroverted and considering that it is a liquidated claim, the Court will enter judgment for the Scheme in the sum of Kshs 7,479,072/83 with compounded monthly interest of 3% on the arrears outstanding.

14. The Respondent to pay costs of the Cause.

Delivered, dated and signed in Nakuru on this 20th day of July 2017.

Radido Stephen

Judge

Appearances

For Claimant	Mr. Kamwendwa instructed by N.M. Kamwendwa & Co. Advocates
For Respondent	Limo R.K. & Co. Advocates (did not file Response or attend hearing)
Court Assistant	Nixon