



**REPUBLIC OF KENYA**

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

**RULING CAUSE NO. 715 OF 2016**

**JOSEPH MURIUNGI RUKIOYA.....CLAIMANT**

**VERSUS**

**THE METHODIST CHURCH IN KENYA.....RESPONDENT**

**RULING**

1. By a Notice of Motion dated 26<sup>th</sup> April, 2016, the claimant/applicant sought an order of the court that the respondent be ordered to pay him the already admitted sum of Kshs. 2,134,634/= for unlawful and unfair termination of employment.
2. The application was based on the grounds among others that after making demands, the respondent by a letter dated 13<sup>th</sup> October 2015 offered to pay the claimant a sum of Kshs. 2,134,634/=.
3. The respondent denied any such admission and further averred that it paid the claimant Kshs. 2,224,418.80/= which was more than the sum the claimant sought to be paid on account of admission.
4. By a letter dated 21<sup>st</sup> September, 2015, the claimant through his advocate demanded to be paid Kshs. 5,236,770/= as his terminal benefits. By a letter dated 24<sup>th</sup> September 2015, the respondent's advocate replied to the demand letter proposing amicable settlement. The letter further requested the claimant's counsel to furnish them with copies of documents in support of their client's claim.
5. The claimant's counsel responded through their letter dated 1<sup>st</sup> October 2015. By a letter dated 13<sup>th</sup> October 2015, the respondent's advocate proposed on behalf of her client the willingness of the respondent to settle the dispute at Kshs. 2,134,634/=. The claimant's counsel through his letter dated 21<sup>st</sup> October 2015 informed counsel for the respondent that his client had rejected the offer for being low. Counsel for the respondent informed the claimant's counsel that she was seeking instruction for her client and would revert. This seemed to have taken long and never happened despite reminders from counsel of the claimant.
6. By a letter dated 18<sup>th</sup> January 2016, the claimant's counsel on his own notion made a counter offer for Kshs. 2,640,255/= with a breakdown of how the figure was arrived at. This letter elicited no response from the respondent's counsel leading to penultimate demand dated 18<sup>th</sup> February 2016 warning the respondent of intended court action.
7. From the chronology of events, set out above, it emerges quite clearly that the respondent made an offer to settle this dispute at Kshs. 2,134,634/= which offer was rejected by the claimant. The claimant subsequently made a counter-offer of Kshs. 2,640,255/= at which offer the respondent never

acknowledge nor reacted to prompting the instant. It therefore cannot be said that there was an admission on the part of the respondent to pay the claimant the same of Kshs. 2,134,634/=.

8. An offer to settle a claim at a particular figure cannot be construed as an admission of the claim. Such offers are usually made without prejudice and can only become binding once unequivocally accepted by the other party. In this particular case, the counter-offer by the claimant cancelled out the offer by the respondent hence it cannot be said that there was an admission to pay the claimant the sum claimed.

9. In conclusion the court will not enter any judgment on admission as sought and will direct that the suit proceeds to trial on merit.

10. It is so ordered.

Dated at Nairobi this 14<sup>th</sup> day of July 2017

**Abuodha J. N.**

**Judge**

Delivered at Nairobi this 14<sup>th</sup> day of July 2017

**In the presence of:-**

..... for the claimant

..... for the respondent

**Abuodha J. N.**

**Judge**