



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 1879 OF 2015

JAMES OTIENO OWITI.....CLAIMANT

VERSUS

CMC MOTORS GROUP LIMITED.....RESPONDENT

RULING

1. This ruling relates to a tabulation of the Claimant's final dues as admitted in the termination letter dated 8th April 2015 being:

- a. Salary up to and including 9th April 2015;
- b. Salary for 43 days' leave earned up to and including 9th April 2015;
- c. Leave traveling allowance for 34.5 days earned up to and including 9th April 2015;
- d. Two months' salary in lieu of notice;
- e. Gratuity for 18 years at the rate of 16 days for each completed year of service totaling 306 days.

2. By an affidavit sworn by the Respondent's Legal Counsel, Erick Masafu on 6th April 2017, a detailed tabulation of these dues has been provided. Reading from the Claimant's response to the tabulation dated 4th May 2017, the bone of contention appears to be netting off of tax from the amount payable to the Claimant.

3. Section 37 of the Income Tax Act places responsibility on every employer to deduct and remit income tax. By virtue of Section 49(2) of the Employment Act, this responsibility survives the end of the employment contract. In light of these clear provisions of law, the Court finds no fault with the tabulation of the Claimant's dues as presented by the Respondent.

4. The result is that the Claimant's dispute in this regard is dismissed with no order for costs.

5. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI

THIS 29TH DAY OF SEPTEMBER 2017

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JUDGE

Appearance:

James Otieno Owiti (the Claimant in person)

Mr. Orina for the Respondent