



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO. 25 OF 2015

JOE JUSHUA D'SILVA.....CLAIMANT

VERSUS

MOMBASA AIR SAFARIS LTD.....RESPONDENT

RULING

1. On 1/7/2016 I entered judgment in this matter in favour of the claimant by awarding her the following:
 - a. Ksh.375000 being his unpaid salary for February and March 2014.
 - b. Ksh. 500000 being two months salary in lieu of notice.
 - c. Kshs 1,500,00 being six months salary compensation for unfair termination of his contract of service.
 - d. Costs and interest.
2. The decreed sum was paid in August 2016 and the costs were determined on 2/12/2016 and payment made on 6/2/2017.
3. A dispute has now arisen concerning the effective date for the accrual of the interest ordered by the court in its judgment. The claimant contends that interest should accrue on the decreed sum from the date of filing suit while the respondent maintains that the interest should accrue from the date of the judgment because the award could not have been ascertained before trial. In his quick rejoinder the claimant contends that his claim was specifically pleaded and clear breakdown outlined.

DETERMINATION

4. I have carefully considered the law and the submissions from the counsels for the two parties. There is no dispute that the claims by the claimant were specifically pleaded from the start and the only amendments made were mainly to correct the dues sought from US dollars to Kenya shillings. Rule 29(3) of the Employment and Labour Relations Court (Procedure) rules (ELRCR's) provides as follows:

“where a suit involves a liquidated amount that is claimed and specified at the time of filing a statement of claim and the court orders that the amount claimed or part of the amount be paid to the claimant, it may in addition to that order, direct that interest be paid on the liquidated amount

awarded at court rates”.

5. Court of Appeal dealt with the same issue in Mukisa Biscuits Manufacturing Co. Ltd VS West End distributors ltd [1970] EA page 469 where it held that:

“The principle that emerges is that where a person is entitled to a liquidated amount or to specific goods and has been deprived of them through the wrongful act of another person, he should be awarded interest from the date of filing suit. Where however, damages have to be assessed by the court, the right to those damages does not arise until they are assessed and therefore interest is only given from that date of judgment.

6. The position in the above proceedings has recently been affirmed by the high court of Kenya in Orix Oil (Kenya) Limited VS Paul Kabeu & 2 Others [2014] eKLR the High court of Uganda in Pan African Insurance Company (U) Ltd Vs International Air Transport Association (HCT-00-cc-cs-0667 of 2003) and the Court of Appeal of Kenya in Transcom Limited & Another Vs Hassan Mohammed Adan.

7. I also totally concur with the legal position taken by the various precedents referenced above save to add that, although in this case, the claim was specifically pleaded, we must differentiate between the claims which were entitlements to the claimant as of right under the contract of service and those which were subject to the discretion of the court after trial. Of the three claims awarded to the claimant, the right to salary arrears and salary in lieu of notice after termination of his contract of service were not subject to the discretion of the court. All what was needed under rule 29(3) of the ELRCR was for him to plead the particulars of the two entitlements and tender evidence in support. Once pleaded and proved the court’s jurisdiction is only limited to enforce the contract and not to alter it in any way. Consequently I find and hold that the claimant is entitled to interest on the claim for unpaid salary and salary in lieu of notice at the courts rate from the date of filing the suit.

8. However the claim for compensation for unfair termination is discretionary award under Section 49 of the employment Act. The court is given discretion to award a maximum of twelve months gross salary guided by the various factors outlined under subsection (4) thereof. Interest on compensation should always accrue from the date of judgment.

DISPOSITON

9. For the reason that the claim for unpaid salary and salary in lieu of notice, (contractual entitlements) were specifically pleaded as required under rule 29(3) of this court’s procedure rules, I direct that the interest awarded vide my judgment delivered on 1/7/2016 shall accrue from the date of filing the suit and shall be at the court rates.

Dated, signed and delivered this 29th September 2017

O. N. Makau

Judge