



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO. 134 OF 2016

(Before D. K. N. Marete)

ONESMUS KIPKORIR KEMOI.....PLAINTIFF

VERSUS

MUNICIPAL COUNCIL OF KERICHO.....DEFENDANT

JUDGEMENT

This matter came to court vide a plaint dated 22nd June, 2011. It does not disclose any issue in dispute on its face.

This matter is not defended or at all. The defendant has not filed any defence and has scarcely participated in these proceedings. It would appear that she was largely disinterested in defending the matter.

The plaintiff's case is that in the year 1996 he entered into a service agreement to serve as an Engineer with the defendant. This contract was confirmed in the course of the year.

The plaintiff's further case is that he continued with this employment until 2009 when he was transferred to Nyahururu. Thereafter, he was denied his dues as follows;

a. 40 days unpaid leave *Kshs.179,100.00*

b. Transfer allowance *Kshs.29,850.00*

c. Training expenses incurred in

2006(International course in project management) *Kshs.176,000.00*

d. Deducted insurance premiums not remitted

Since 2007 to August 2009 *Kshs.96,664.00*

Kshs.481,614.00

He prays as follows;

- a. *Special damages set out in paragraph 5 of the plaint.*
- b. *General damages for wrongful refusal to pay money owed.*
- c. *Costs of this suit.*

The matter came to court variously until 30th November, 2017 when the plaintiff chose a determination by way of written submissions.

The issues for determination therefore are;

1. Whether the plaintiff entitled to the relief sought?
2. Who bears the costs of this claim?

The 1st issue for determination is whether the plaintiff entitled to the relief sought. The claimant in her written submissions dated 8th December, 2017 reiterates his case as pleaded and further submits as follows;

The plaintiff herein claims a sum of Kshs.481,614 which amounts of monies include unpaid leave, transfer allowance, training expenses and deducted insurance premiums that were never remitted between the year 2007 and 2009.

The claimant had an opportunity in the subordinate court to testify and produce receipts and other documents outlining the claims he was entitled to from the respondent herein. The court had an opportunity to scrutinize the said receipts and made a determination that the claimant was entitled to Kshs.309,166.00.

...Though the court is not bound by the ex parte judgment delivered, we kindly urge the court to take a second look at the exhibits and/or receipts produced by the claimant herein to come to a sound judgement.

The respondents herein were given a second chance to defend themselves when the court allowed their application to set aside the ex parte judgement however they never bothered to come to court. The claimant took the initiative of transferring the suit to this ... court. Since then all efforts to get the respondent to come to court have proved futile.

It is in the interest of justice that the claimant herein is awarded the general and special damages claimed as he had proved his case on a balance of convenience.

I agree with the claimant/plaintiff. This court is duty bound to evaluate this case and all data and evidence in support thereof and come up with a determination of the same, taking all factors and circumstances into account.

This is a protracted matter and has rested within the court presides for the last six and half years. This is most unfair. The defendant has taken a back seat and is not interested in the matter. We must apologize for this and other such occurrences in our system.

This court warns itself that it is not sitting on appeal. This situation has been occasioned by a transfer of this matter to this court by virtue of the provisions of Article 162 (2) (a) of the Constitution of Kenya, 2010 and other affiliated statutory provisions. The court is therefore duty bound to hear and determine the matter on its merit.

I have scrutinized the evidence of the plaintiff in support of his case as presented and laid out in the lower court. I have also scrutinized and analyzed the judgement of the learned chief magistrate at that level. This to me is sound, proper and appropriate in the circumstances of this case. The presentation of the

case and evidence would not allow any deviation from the considered determination of the trial court. I therefore adopt the judgement *in toto*. I therefore find that the plaintiff/claimant is entitled to relief the sought and hold as such. This answers the 1st issue for determination.

I therefore inclined to allow the claim and award relief as follows;

- i. 40 days unpaid leave.....Kshs.39,800.00
- ii. Transfer Allowance.....Kshs.29,850.00
- iii. Training Expenses incurred and not refunded.....Kshs.176,000.00
- iv. Deducted Insurance Premiums deducted and
not remitted to CIC Insurance.....Kshs.63,516.00
- Total.....Kshs.309,166.00**

- v. Interest on i to iv above at court rate from the date of judgement of this court till payment in full.
- vi. The costs of this claim shall be borne by the respondent.

Delivered, dated and signed this 15th day of December, 2017.

D. K. Njagi Marete

JUDGE

Appearances

1. Mr.Wanuna instructed by B. W. Mathenge & Company Advocates for the plaintiff/claimant.
2. No appearance for the defendant.