



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1542 OF 2010

JAMES WAMBUA MUKOSI.....CLAIMANT

VERSUS

POSTAL CORPORATION OF KENYA.....RESPONDENT

M/s Muyai for Claimant/Applicant

Mr. Kiprono for Respondent

RULING

1. This is an application for review of the judgement of Nduma J in which the court awarded the claimant Kshs 23,768.35 being one month's salary in lieu of notice and Kshs 308,988.35 being 12 months gross salary as compensation from unlawful termination. The said amount has since been settled. Only party and party costs remain to be computed and taxed.
2. It is alleged by the applicant that the court found;

“The claimant should be treated as if his service was normally terminated and terminal dues be processed with effect from the date of such termination”.

But the court did not clarify the date of termination nor calculate the actual terminal dues owed to the claimant by the defendant.

3. The applicant seeks clarification to the effect that the actual date of the termination was 7th March 2005 and that the claimant be paid Kshs 15,949.50 in lieu of 31 untaken leave days and 11,507.25 as transport allowance and the respondent be compelled to clear the claimant so that he may access pension dues.
4. The application is opposed vide a replying affidavit of Jane F. Otieno corporation secretary of the respondent in which she states inter alia; that the application is not based on any grounds set out under Rule 32(1) of the Industrial Court (Procedure) Rules, 2010; that the court award has been settled in full and this application is an appeal disguised as it seeks to challenge the findings of the court notwithstanding that the subject matter of review was not pleaded. In any event the application has been brought after inordinate delay on 19th November 2015 the judgement having been delivered on 29th November, 2013.

Determination

5. Upon careful consideration of the deposition before court and submission by the parties, the court finds that the application has been brought more than 2 years from the date the judgement was delivered and after the judgement has been settled in full. This constitutes inordinate delay occasioning injustice to the respondent. On this point alone the application is not meritorious and same is dismissed.
6. Furthermore and to put the matter to rest, the application raises no cogent grounds of review in terms of rule 32(1) of the Industrial Court (Procedure) Rules 2010.
7. The reliefs sought in the application were not pleaded at all in the statement of claim and are incapable of grant therefore. This is clearly an afterthought by the claimant/applicant upon receiving the full decretal sum from the respondent.
8. The application arises from a misconstruction of the judgement of the court in that the court stated that the termination is to be regarded as a normal termination with notice and went ahead to award Kshs 23,768.3 in lieu of notice although the relief was not specifically pleaded.
9. The court went ahead to award compensation equivalent to 12 months' salary in lieu of notice instead of reinstating the Claimant. The date of termination was not in dispute and any terminal benefits including pension which was not the subject of the suit remain payable as between the parties including provision of a certificate of service to enable the claimant follow his pension dues. This is a legal obligation on the part of the respondent.
10. The respondent should provide the certificate of clearance and service within 30 days if this has not been done. Parties in an employment relationship should always act in good faith on matters that are purely contractual even though the same are not subject of the suit.
11. The application for review is misconceived and same is dismissed with no order as to costs.

Dated and delivered at Nairobi this 18th day of March 2016.

MATHEWS N. NDUMA

PRINCIPAL JUDGE