



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAKURU

CAUSE NO. 392 OF 2014

BENSON OWINO ODONGO.....CLAIMANT

v

MENENGAI OIL REFINERY LTD.....RESPONDENT

RULING

1. After hearing testimonies from both sides, the Court delivered a judgment on 30 October 2015. Among the heads of relief awarded to the Claimant was Kshs 334,439/95 on account of overtime.
2. This head of relief aggrieved Menengai Oil Refinery Ltd (Respondent) and on 4 December 2015, it filed an application for review of that portion of award.
3. On 4 December 2015, the Court stayed execution of that part of the judgment pending *inter partes* hearing on 8 December 2015. The Court granted stay of execution pending review on condition that the Respondent deposited Kshs 200,000/- into Court. That order was complied with on 15 January 2016, instead of before 15 December 2015 as directed by the Court.
4. The review application was taken on 1 February 2016.
5. The review jurisdiction of this Court is founded upon the provisions of rule 32 of the Industrial Court (Procedure) Rules, 2010 and it is wider than the jurisdiction given to the High Court under the Civil Procedure Rules.
6. The reasons advanced by the Respondent for seeking the review are that the Claimant was paid all overtime worked for, and that the muster rolls for some of the periods in respect of which the overtime were claimed showed the Claimant did not work overtime.
7. The Respondent also contended that the Claimant even claimed overtime for March 2014 when he was actually not in employment.
8. It appears, though the Respondent did not expressly contend so, that the application for review is anchored on *discovery of new information or matter of evidence which was not available to it by the time of trial and misapprehension of the facts by the Court*.
9. The Respondent annexed to the application pay slips and muster rolls for the periods in contention and it explained away the failure to produce these documents earlier on at the trial to the fact that the documents had been archived (new information/evidence).

10. The Respondent was aware as it was put on notice in September 2014 when the Memorandum of Claim was served upon it that the Claimant was seeking overtime from the period 2007 to July 2014.

11. In my view, had the Respondent exercised due diligence it should have retrieved the pay slips and muster roll for the relevant period and placed the same before Court to challenge and or controvert the Claimant's head of claim on overtime. It had more than sufficient time to do so.

12. On the reason advanced that the Claimant sought and was granted overtime pay for a period he was no longer in the employment of the Respondent (misapprehension of facts), the Court notes that the Respondent had pleaded that the Claimant had deserted employment on 31 March 2014.

13. The Court examined the question of overtime at paragraphs 27 to 30 of the judgment and is of the view that any complaints on the same would be better resolved on appeal rather than on review.

14. The Court consequently dismisses the application for review with costs to the Claimant.

Delivered, dated and signed in Nakuru on this 7th day of March 2016.

Radido Stephen

Judge

Appearances

For Claimant Ms. Kerubo instructed by Korongo & Co. Advocates

For Respondent Mr. Ambenge, Senior Executive Officer, Federation of Kenya Employers

Court Assistant Nixon