

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO 1441 OF 2013

GEORGE MUTETI.....CLAIMANT

VS

EXPRESS DDB KENYA.....RESPONDENT

RULING

1. On 13th November 2013, I delivered an award in favour of the Claimant, including a component of commission which I directed the parties to tabulate. The parties failed to achieve an agreeable tabulation hence this ruling.

2. In the aforesaid award, I found that the Claimant was entitled to 20% commission on account of *'below the line'* jobs procured through his marketing efforts calculated on the basis of net profit. I also defined net profit as sales revenue less direct and indirect expenses.

3. In his tabulation, the Claimant ignored the definition of net profit assigned by the Court and thus presented figures that do not factor in indirect costs. Needless to say this tabulation was not helpful to the Court.

4. On its part, the Respondent presented a detailed tabulation showing the cost of production as well as the overhead costs of each job. In the absence of any contrary tabulation that takes into account overhead costs, the Court adopts the figures presented by the Respondent as the commission payable to the Claimant. I therefore find that the Claimant is entitled to Kshs. 27,626.43 as commission.

4. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 15TH DAY OF APRIL 2016

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JUDGE

Appearance:

Mr. Okemwa for the Claimant

Mr. Mituga for the Respondent