



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO. 1188 OF 2015

TITUS WAMALWA KHAEMBA.....CLAIMANT

VERSUS

TRANSPORT WORKERS UNION.....1ST RESPONDENT

DAN MIHADI (GENERAL SECRETARY).....2ND RESPONDENT

Interpretation of Judgment delivered on 5th February 2016

1. Claimant/applicant brought a notice of motion application on a certificate of urgency on 15th April 2016 seeking the following orders inter alia;

- i. That this Honourable court be pleased to review its judgment delivered on 5th February 2016.
- ii. That subsequent to prayer three (3) above this Honourable court be pleased to declare that the accrued salary arrears, transport and operational allowances is due to the claimant/applicant in Kenya shillings six hundred and seventy three thousands and fifty nine (Kshs.673.059) only as at 31st March 2016.
- iii. That in the alternative the Honourable court to declare how much the claimant/applicant is entitled to as salary arrears and allowances.

2. The application is based on grounds set out on the notice of motion as follows;

That the court delivered a judgment in favour of the claimant/applicant on 5th May 2016 to the effect that the alteration of the terms and conditions of the claimant's terms and conditions of service was against the union constitution and was unlawful.

That there has arisen a conflict of interpretation of the judgment of the court between the claimant/applicant and the respondent as to whether the claimant/applicant is to be paid salary arrears calculated at Kshs.80,000 per month including allowances of Kshs.15,000 to constitute a gross salary of Kshs.95,000 per month which was the case prior to the alteration or whether the claimant/applicant is entitled to payment of Kshs.40,000 as stated by the respondents being half his monthly salary less allowances.

The claimant/applicant seeks the court to give clarity to its judgment to allow the same to be implemented.

3. The application is further supported by an affidavit of the claimant/applicant, Mr. Titus Wamalwa Khaemba sworn on 14th April 2016 in which he details the history of remuneration paid to him by the respondents before and after the impugned alteration to his disadvantage.

4. The claimant also shows the arrear payments made to him by the respondents since April 2015 until 15th April 2016, when the respondents stopped paying him. The claimant claims Kshs.673,059 being arrears upto 31st March 2016.

Response

5. The application is opposed vide a replying affidavit of Mr. Dan Mihadi, the secretary general of the Transport workers Union, the 1st respondent.

6. The respondents state that the claimant/applicant did not plead in his statement of claim any specific amount of money either as outstanding salary or allowance and did not seek payment of any such specific amount of money within any specific time frame.

7. The respondents deny that the claimant was paid a gross salary of Kshs.95,000 and state that the claimant was paid and is entitled to a monthly gross salary of Kshs.40,000 per month.

8. The respondents state that the finance committee minutes show that the claimant earned Kshs.30,000 per month before 21st March 2007 but same was reduced to Kshs.20,000 on 21st March 2007. The amount was reviewed to Kshs.40,000 in the meeting held on 11th May 2013 and 13th April 2015. That no monthly allowances were sanctioned by the finance committee.

9. The respondents noted the letter by the secretary general, the late Simon A. Kagali dated 6th January 2012 indicating that the basic salary of the claimant/applicant was increased to Kshs.80,000 per month with effect from 1st January 2012. The respondent disputes that the salary was approved by the finance committee and contends that any such adjustment outside the organs of the union was unlawful. Respondents state that there is no evidence that the claimant/applicant was ever paid Kshs.95,000 per month.

10. The respondents assert that, the claimant was acting general secretary of the union upon the death of Mr. Simon Kagali in August 2014 and it is that time, when the claimant was paid double salary in the sum of Kshs.80,000 less statutory deductions, making a net of Kshs.74,249 per month. That this amount was paid from May 2015 until when the deponent came into office on 19th March 2016. That any payment of acting allowance of Kshs.40,000 after the deponent assumed office was unlawful and must have been paid by the connivance of the claimant and the late Mr. Kagali.

11. Therefore the payroll approved by the Trustees on 7th October 2014 and 17th March 2015 is based on the double salary given to the claimant in his acting capacity.

Determination

12. Upon a careful analysis of the facts set out in the application and the replying affidavit, and having perused the memorandum of claim filed by the claimant, the statement of defence, and the judgment of the court, it is clear that the respondent did not in its defence deny the change of the terms and conditions of the claimant by the union's finance committee. The respondents only sought to justify the change of terms of the claimant by stating that the 1st respondent was experiencing financial difficulties at the time and it was thus compelled to review the terms and conditions of its officials including the claimant.

13. The judgment of the court came out clearly on this aspect.

In the opening paragraph of the judgment, it is clear that the claimant sought payment of arrear salary with effect from July 2015 at the rate of Kshs.80,000 per month. Transport allowance of Kshs.10,000 per month from April 2015 and branch operation allowance at Kshs.5,000 per month with effect from May

2015.

14. It is also clear from the judgment that the claimant was entitled to a salary of Kshs.80,000 a month only during the time, he held the positions of acting general secretary of the union, deputy general secretary and the branch secretary of the Airport branch at the same time.

15. The arrear salary payable to the claimant is to be calculated at Kshs.95,000 Kshs. per month, only for the period he held the acting position. The arrears payable after Mr. Dan Mahadi was elected the general secretary is to be calculated at Kshs.40,000 per month only.

16. The court therefore makes the following final orders to clarify the ambiguity on the face of the judgement.

- i. The claimant is awarded arrear salary calculated at Kshs.95,000 per month for the period the claimant held the position of acting general secretary.
- ii. The rest of the arrears be paid at the rate of Kshs.40,000 per month plus transport allowance of Kshs.10,000 from April 2015 and branch operation allowance of Kshs.5,000 per month from May 2015.
- iii. The computation and payment be made within thirty (30) days from the date of this ruling.
- iv. Respondents to pay costs of the application.

Dated and delivered at Nairobi this 5th day of August 2016

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE