



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT MOMBASA
CAUSE NUMBER 522 OF 2014

BETWEEN

MOROWA FUMO CLAIMANT

VERSUS

BAMBURI CEMENT LIMITED.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Mr. Oddiaga Advocate instructed by Stephen Oddiaga & Co Advocates for the Claimant

Mr. Njeru Advocate instructed by Njeru & Company Advocates for the Respondent

RULING

1. The Claimant came to Court in an Application filed under certificate of urgency, seeking, and was granted an order compelling the Respondent to retire him on medical grounds. The order was given on 18th December 2014. The Respondent complied with the order, retiring the Claimant, with effect from 15th January 2015.

2. The Claimant was offered terminal benefits calculated at Kshs. 6,183,980 after tax and other deductions. He disputes the amount offered as terminal benefits, arguing that the Respondent did not follow the applicable Collecting Bargaining Agreement in calculating the terminal dues. He filed a fresh Application on 30th January 2015, asking the Court to among other things, compel the Respondent to file in Court details of terminal benefits due to the Claimant and that judgment be entered against the Respondent for terminal benefits payable on retirement for medical reasons, at Kshs. 8,593,800.

3. He also complains that the Respondent required him to sign a Clearance Certificate to receive the terminal benefits offered by the Respondent. The Clearance Form states the sum paid is “ *in full and final settlement and discharge of all sums due to me, and also acknowledge that I have no further claims against the company including claims for re-instatement into my job or to further compensation arising out of termination of my contract of service, my resignation or retirement.*” He apprehends this would prejudice his legitimate pursuit of other dues which have not been captured in the offer made by the Respondent.

4. The Application is supported by the Affidavit of the Claimant sworn on 30th January 2015. The Respondent replies through an Affidavit sworn by its General Counsel Betty Kanyagia on 19th February

2015. The respective Advocates argued the Application on 24th February 2015.

The Court is of the view that:-

5. The Respondent has complied with the order retiring the Claimant on medical grounds, which was an unusual interim prayer sought by the Claimant and granted by the Court. The disagreement on the amount payable cannot be resolved through another interlocutory Application. The disagreement should only be resolved alongside the other substantive issues which are pending the determination of the Court, after a full hearing.

6. The requirement by the Respondent that the Claimant signs a discharge voucher fully absolving the Respondent from further claims upon payment of the terminal benefits offered by the Respondent, serves no useful purpose in light of the disagreement on the amount payable, and other outstanding aspects of the Claim, already in the jurisdiction of the Court.

7. The wording of the Respondent's Certificate of Clearance, is such as to cause reasonable apprehension in the mind of the Claimant, that his Claim has been compromised on retirement. He has the right to argue he is entitled to further terminal benefits and compensation for work-related illness, a right that should not be prejudiced by compelling him to append his signature to the discharge voucher. The Claimant should however acknowledge that he has retired; received a considerable sum of money from the Respondent in terminal benefits; and harbours no desire for reinstatement. *IT IS ORDERED:-*

- a) ***The Claimant shall receive the sum of Kshs. 6,183,980 in terminal benefits as offered by the Respondent;***
- b) ***The sum be paid to the Claimant, upon his execution of the Clearance Form;***
- c) ***Such Form shall be edited by the Respondent, so as to exclude the discharge component, while retaining the acknowledgement component;***
- d) ***The balance of terminal benefits, if any, shall be determined alongside any other claims the Claimant may have against the Respondent, upon hearing of the substantive Claim.***

Dated and delivered at Mombasa this 20th day of March 2015

James Rika

Judge