

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1734 OF 2014

JOSEPH MIRUMBI OOKO.....CLAIMANT/RESPONDENT

VERSUS?

STEEL STRUCTURES LIMITED.....RESPONDENT/APPLICANT

RULING?

1. The Respondent's Notice of Motion application dated and filed on 27th February 2015 is up for determination. In the motion, the Respondent/Applicant seeks that the claim herein be struck out for being an abuse of the Court process and the Claimant be condemned to pay the costs of the suit. The grounds on the face of the motion are that the Claimant left the employ of the Respondent on his own accord in January 2014. The Respondent asserts that all the dues payable to the Claimant by the Respondent were paid to him in April 2014 and receipt thereof duly acknowledged by the Claimant and that he discharged the Respondent by confirming he had no further claim against the Respondent. The Application was supported by the affidavit of Francis Kibiru Njenga sworn on 27th February 2015. In the affidavit, it was deponed that the Claimant was routinely examined by a medical doctor from the Directorate of Occupational Safety and Health and was given a clean bill of health on 18th August 2012. That the Claimant was examined by doctors at Kenyatta National Hospital between 27th December 2013 and 7th January 2014 and consequently sought to retire on medical grounds. The deponent stated that the Claimant's decision was accepted by the Respondent who tabulated the dues and on 4th April 2014 paid the terminal dues to the Claimant who signed a clearance certificate that confirmed net amount received and that he had no further claim against the Respondent.
2. The Claimant opposed the motion and filed grounds of opposition on 31st March 2015 and a Replying affidavit sworn on 26th March 2015. In the grounds, the Claimant asserted that the application was frivolous, premature and incompetent and thus an abuse of the Court process. The Claimant stated that the suit raises triable issues which can only be determined upon hearing the main suit on merit and that he had a tenable claim against the Respondent which could not be easily wished away. In his affidavit, the Claimant deponed that the application was malafide and full of falsehoods. He deponed that during his employment he suffered upper airway disease as a result of occupational hazard arising from exposure to paints. He denied that he was fully paid his terminal benefits and asserted that the signature on the discharge was forged. ?
3. Parties consented to file written submissions in place of orally canvassing the application. The Claimant/Respondent filed submissions on 22nd May 2015 while the Respondent/Applicant filed its submissions on 27th May 2015. The Claimant submitted that the application was brought in bad faith and there were allegations of forgery of his signature which must be determined by way of oral evidence and cross-examination. The Respondent on its part submitted that the Claimant never worked as a painter nor was he exposed to paint. The Respondent asserted that on his own volition, the Claimant sought to retire on medical grounds and the Respondent acceded to the request. The Respondent then tabulated the dues in accordance with the Collective Bargaining Agreement then in force and paid out the sums to the Claimant who accepted the sums in full and final settlement of his terminal dues. The Respondent submitted that the effect of the discharge

was that the Claimant could not seek to recover at all as he had fully discharged the Respondent. The Respondent relied on the case of **Maxwell Odede & Another v Mabati Rolling Mills Limited [2015] eKLR** for the proposition that once a party discharges another from present or future claims the party discharging the other is precluded from seeking any other dues. The Respondent thus sought that the suit be dismissed with costs.

4. In the matter before me, the claim is made in relation to Occupational Safety and Health. The Claimant and Respondent may not be aware that Kenya has not ratified ILO Conventions on Occupation Safety and Health (OSH). The Conventions being Occupational Safety and Health Convention, 1981 (No. 155), Occupational Safety and Health Recommendation, 1981 (No. 164), the Protocol of 2002 to the Occupational Safety and Health Convention, and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) are not expressly made part of our law through ratification. The Occupational Safety and Health Act 2007 is comprehensive and has some elements of the International Labour Standards and the reasoning against ratification are unclear.
5. Be that as it may, the Claimant herein claims that he suffered occupational hazards. He received benefits from his employer in relation to his contractual obligations. He is stated to have discharged the Respondent. Is this discharge absolute? In the case of *Odede & Another v Mabati supra*, the Claimants had discharged the employer fully and the Court held that once a party discharges another from all further, future or present claims, it means that the party discharging the other is precluded from seeking any other dues. ?
6. The discharge the Claimant signed was not absolute in the sense that it did not cover the claim he now has before Court. It was a discharge only on the terminal dues he was entitled to but not the dues he could be entitled to for the occupational hazard he alleges to have suffered in the Respondent's premises. In the circumstances, the claim before Court is competent in as far as it seeks to recover the dues he could be entitled to under the Occupational Safety and Health Act. On the converse, he cannot recover any further sums for notice, days worked, gratuity or service and the like as he discharged the employer fully in his indemnity signed on 4th April 2014.
7. In the premises, the order that commends itself for me to make is one dismissing the application but I make no order as to costs. The matter may be set for directions and settling of issues for determination. Copy of the Ruling to be given to the Cabinet Secretary for Labour to consider the ratification of the ILO Conventions on OSH.

Orders accordingly.

Dated and delivered at Nairobi this 15th day of July 2015

Nzioki wa Makau

JUDGE