



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAKURU

CAUSE NO. 343 OF 2013

FELIX KIPKEU KIYENG

CLAIMANT

V

MOI TEACHING AND REFERRAL HOSPITAL

RESPONDENT

RULING

1. In a judgment delivered on 24 April 2015, the Court awarded the Claimant Kshs 83,077/- as unpaid overtime.
2. The Respondent did not make prompt payment and the Claimant instructed auctioneers who moved in and attached the Respondent's properties.
3. The attachment led to the Respondent issuing a cheque dated 29 June 2015 for Kshs 58,153/90 to the Claimant but when it was forwarded was not disclosed, and another cheque of Kshs 20,000/- to Gillette Traders & Auctioneers on 2 July 2015.
4. On 7 July 2015, the Respondent moved Court through a motion under certificate of urgency seeking some 6 or so orders. The Court certified the motion urgent and directed that it be served for *inter partes* hearing on 22 July 2015.
5. The motion was served but on the return date, Ms. Ngere for the Respondent informed the Court that Mr. Chepkwony was held up in another Court though she did not have the details of the suit. The Court declined to adjourn the motion and directed that it proceed.
6. One of the issues raised by the Respondent in the supporting affidavit was that the Claimant extracted a decree without any reference to it and that the decree did not reflect the true orders of the Court.
7. This is true. The decree as extracted in part reads that

Judgment be and is hereby entered for the Claimant against the Respondent for,

1) *A declaration that the termination of the claimant was unfair*

2).....

8. Paragraph 36 of the judgment expressly stated that

The Court finds and holds that the Claimant has failed to discharge the burden of proving a cause of action of unlawfulness of termination of employment based on redundancy and dismisses the prayers for compensation, pay in lieu of notice and gratuity.

9. On the face of it, the decree as extracted does not reflect the judgment and orders issued on the question of *unlawfulness of termination of employment*.
10. This is not just an irregularity which can be cured. It is a fatal defect which goes to the very heart

- of the findings by the Court and the Court is entitled to set it aside/nullify it *ex debito justitiae*.
11. Although no explanation was offered, it appears that the Claimant was in a rush to have a decree extracted without complying with the peremptory statutory requirements on extraction of decrees. A draft decree should have been shared with the Respondent for approval or otherwise.
 12. For this, the blame squarely falls on the Claimant and his legal advisors.
 13. But the Court's registry and those in charge must also bear some blame. Court orders and decrees should not just be signed and sealed as a matter of course. The officer sealing and signing must ensure that the order and or decree is in agreement with the findings and holdings in the judgment.
 14. With the conclusion reached that decree as extracted is fatally defective, any actions taken on that basis must be set aside/nullified, and the Court sets aside/nullifies the decree and any consequent actions taken upon it.
 15. It is therefore not really necessary for the Court to express itself on the other limbs of orders sought by the Respondent save to say that the awards made by the Court are subject to statutory deductions. That is a requirement of section 49(2) of the Employment Act, 2007.
 16. Respondent is awarded costs of the motion.

Delivered, dated and signed in Nakuru on this 6th day of November 2015.

Radido Stephen

Judge

Appearances

For Claimant Chepkwony & Co. Advocates

For Respondent Ms. Ngere instructed by Mburu Maina & Co. Advocates

Court Assistant Nixon