



REPUBLIC OF KENYA
INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 655(N) OF 2009

FERDINAND IMBAYI MUTAKHA.....CLAIMANT

versus

THE CHIEF EXECUTIVE OFFICER MWALIMU COOPERATIVE AND

CREDIT SAVINGS SOCIETY.....1ST RESPONDENT

MWALIMU COOPERATIVE AND CREDIT

SAVINGS SOCIETY.....2ND RESPONDENT

RULING

1. The Claimant sought an interpretation of the Award vide his Notice of Motion Application dated 2nd April 2012. In it, he sought the interpretation of the terminal dues he is entitled to in terms of the Court Award dated 14th September 2011 by Judge Kosgey sitting with 2 members of the Industrial Court Tribunal at Nairobi.
2. The interpretation is sought as the Court did not tabulate the terminal dues the Claimant was entitled to. In the Award, the Court determined as follows:-
 - i. The termination of the Claimant by Respondent be upheld
 - ii. The Claimant be paid terminal dues applicable to normal termination of service under the Respondent's employees terms of service
 - iii. The Respondent will recover the Claimant's debt to it from the Claimant's terminal dues
 - iv. No order as to costs.
3. The interpretation sought must of necessity include the finding under 2 and 3 above alone. The first is crystal clear as is the last. In relation to the terminal dues payable, without rehashing the testimony and determination by the learned Judge, the Claimant was entitled to receive the terminal dues payable to the 2nd Respondent's employees upon termination. These were as

follows:-

- i. Gross pay – Kshs. 124,045/-
- ii. Outstanding leave days (120) – 295,125/-
- iii. One month salary in lieu of notice 59,025/-
- iv. 11 days worked in May 2008 – 44,016/-

Total Kshs. 398,166/-

4. The sum due as shown above was inclusive of taxes. The same was to be subjected to statutory deduction. The tax payable was computed as Kshs. 133,008/- and thus the dues after tax were **Kshs. 265,158/-**. This was the sum the Court awarded to the Claimant.

5. The Respondent was to recover the Claimant's debt to it from the Claimant's terminal dues. The Claimant owed the following:-

- i. Medical over expenditure – Kshs. 29,063/-
- ii. Salary advance – Kshs. 33,750/-
- iii. MWASWA surcharge Kshs. 140,845/-
- iv. WSF (returned cheques on the account) – Kshs. 1,232,624.96
- v. IDEA Version 7 Licence (Dongle) – Kshs. 190,000/-

Net Liability Kshs. 1,361,124.96

6. The above sum was to be deducted from the amount awarded to the Claimant. The amount would be Kshs. 398,166/- minus Kshs. 1,361,124.96 which equals Kshs. 962,958.96. It is therefore my finding that the net result of the offsetting will lead to the result that the Claimant will have to pay the sum of **Kshs. 962,958.96** to the Respondent in terms of the Award of 14th September 2011. As the Court did not mulct any party with costs, I will not add to the Claimant's misery though he lost and ordinarily costs would follow the event.

7. In the final result I order that the Claimant pays the sum of **Kshs. 962,958.96** to the Respondent forthwith.

It is so ordered.

Dated and delivered at Nairobi on this 9th day of January 2014

Nzioki wa Makau

JUDGE