



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**  
**CAUSE NO 1368 OF 2010**

**ISAAC MWELEZA OKUOGA.....CLAIMANT**

**VS**

**KENCHIC LIMITED.....RESPONDENT**

**RULING**

1. On 3rd November 2010, the Claimant filed a Memorandum of Claim in which he framed the issue in dispute as 'underpayment and terminal dues'. The Respondent filed a Reply on 27th January 2011.
2. On 25th July 2013, the Claimant filed a Notice of Motion seeking orders to compel the Respondent to avail particulars of how the Respondent computed normal and rest day overtime hours and pay amounts as well as pay slips evidencing payment of overtime for period between 1998 and 2004.
3. The Claimant's application is based on the grounds that the Respondent has declined to avail to the Claimant any evidence of payment of overtime compensation in respect of normal days and rest days worked or any explanation as to how the figures were calculated.
4. The Respondent opposes the Claimant's application on the following grounds:
  - a. That the application is incompetent since the Claimant's claim is for underpayments for period between 2004 and 2008 yet the application seeks production of records for period between 1998 and 2004 which period is not pleaded in the claim;
  - b. That the application for records for period between 1998 and 2004 is time barred by dint of Section 90 of the Employment Act, 2007;
  - c. That while the matter herein was pending in Court, the Advocates for the parties agreed to have the matter settled at Kshs. 51,216 which sum was received by the Claimant's Advocates on 5th December 2011 in full and final settlement of the claim for period between 1998 and 2008;
  - d. That the claim has been settled in full pursuant to an agreement reached and executed between the Advocates for the parties on 5th December 2011.
5. In a supplementary affidavit sworn on 6th November 2013, the Claimant depones that the period for which he claims payment ought to have been 1998 to 2004 and not 2004 to 2008 as set out in the Memorandum of Claim.

6. The Claimant further depones that the sum of Kshs. 51,216 paid to his Advocates was partial payment in respect of his claim for Kshs. 1,770,980. According to the Claimant, the agreement contained in the certificate of payment dated 5th December 2011 is null and void since Patrick Karugu who signed it is not an Advocate and was not therefore qualified to discharge the Respondent from further liability.

7. The manner in which this matter has been brought to Court is somewhat unusual. On the face of it, the Claimant's application seeks production of records. However, the affidavits and submissions filed on behalf of the parties raise other issues which are substantive.

8. First, the Claimant seeks to amend his claim by his supplementary affidavit sworn on 6th November 2013. Second, the Respondent raises the issue of limitation of the Claimant's claim. Thirdly, the parties have asked the Court to determine the legal effect of the certificate of payment dated 5th December 2011.

9. The Court was unable to understand why the issues raised in the affidavits and submissions were not dealt with separately in the normal manner. An application seeking an order for production of documents must be clear and unambiguous. In this case, the Claimant transformed his application into some sort of an omnibus incapable of producing any specific order. In the circumstances, the Claimant's application dated 24th July 2013 is dismissed with no order for costs.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 26TH DAY OF FEBRUARY 2014**

**LINNET NDOLO**

**JUDGE**

.....*Claimant*

.....*Respondent*