



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 119 OF 2013

[FORMERLY CAUSE NO. 2109 OF 2012 AT NAIROBI]

FERDINAND OMOKE NYAENDE.....CLAIMANT

VERSUS

BEDROCK HOLDINGS LIMITED.....RESPONDENT

[Before Hon. Justice Byram Ongaya on Friday 14th February, 2014]

JUDGMENT

The court entered judgment in this case in favour of the claimant on 10.07.2013. The respondent filed an application to set aside the judgment and by consent of the parties, the judgment was set aside on 25.07.2013.

The case was set down for hearing on 30.10.2013 when by consent of the parties it was ordered that the case be determined on the basis of the documents on record including the letter by the claimant accepting payment of Kshs.85,551.90 and taking into account all the correspondence on record. The parties' respective Advocates did not file the final submissions as ordered by the court. The respondent attached on its list of documents the computation by the district labour officer at Nakuru being No. 3 on the list and showing that the claimant had attended the meeting and his total claim against the respondent as calculated was Kshs.85,551.90. The claimant has not disputed the proceedings of that meeting and paragraphs 1.6 and 1.7 of the statement of claim state that meetings with the labour officer were held.

The respondent delayed to pay the dues as computed by the labour officer. The claimant therefore filed the memorandum of claim on 18.10.2012 through Wambeyi Makomere & Company Advocates. The claim is for the release of withheld accrued benefits of Kshs.654,370/= comprising:

- (a) Leave for seven years – Kshs.54,922.00.**
- (b) Public holidays worked being – Kshs.23,236.00.**
- (c) Underpayment for seven years being – Kshs.466,368.00.**
- (d) Weekly rest days worked – Kshs.109,844.00.**

The respondent filed the statement of defence on 22.08.2013 through Mwamu and Company Advocates and prayed that the claimant's suit be dismissed with costs.

The only issue for determination in this case is whether the claimant is entitled to the amount of money as claimed. The court has considered the documents on record and in absence of the claimant's evidence at the hearing finds that the claimant has not established the claim for weekly rest days, leave, public holidays, and underpayments as claimed. Nevertheless, on 30.10.2013 the learned counsel for the respondent Mr. Mwamu submitted that the respondent would pay the claimant's dues as calculated by the labour officer. The court finds that in view of that submission and the claimant's endorsement of the calculations, the claimant is entitled accordingly.

In conclusion, judgment is entered for the Claimant against the respondent for:

- (a) The respondent to pay the Claimant Kshs.85,551.90 by 1.03.2014, failing interest to be payable from the date of filing of the cause being 18.10.2012 till the full payment.**
- (b) The Respondent to pay costs of the case.**

Signed, dated and delivered in court at Nakuru on Friday 14th February, 2014.

BYRAM ONGAYA

JUDGE