



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 2286 OF 2012

DAVID MUTEVU and 103 OTHERS..... CLAIMANTS

VERSUS

AFRICA NAZARENE UNIVERSITY RESPONDENT

RULING

Nyabena Nyakundi & Co. Advocates for the Claimants

Kaplan & Stratton Advocates for the Respondent

1. On 10th March 2014, the respondent herein filed an application by Notice of Motion seeking among other things that the judgement delivered herein and dated 13th February 2014 did not contain any ascertainable amount. The main prayer was in seeking stay of execution pending appeal. Most issues were settled between the parties save for the judgement amount that was not indicated. On 7th April 2014, Gachuhi Advocate for the respondent and Nyabena Advocate for the claimants herein made their submission on this issue.

2. Mr. Gachuhi submitted that the judgement herein made a finding that the claimants were entitled to three (3) months' salary while in evidence there was nothing to indicate the gross salary of the claimants. On 6th March 2014, the court granted the respondent interim stay of execution subject to a deposit of award amounts granted to the claimants. That the respondent is unable to comply as these amounts are not ascertainable as they have to comply with section 49(2) of the Employment Act where statutory dues must be deducted. Also from the award no allowances are payable as held in the case of *Kenya Ports Authority versus Silas Obengele, Civil Appeal No. 38 of 2005* that allowances such as housing and other benefits only apply while the employment lasts as they are to facilitate the efficient work performance and therefore do not arise when there is no employment. That the claimants herein should only be paid the basic salary less statutory dues as to pay anything else will be punishment to the respondent and this is not the court objective.

3. Mr. Nyabena for the claimants submitted that the judgement herein is clear as what is payable to the claimants is the gross salary and not basic salary. The respondent as the custodian of the employee's details is able to compute the gross salary. That decision in *Kenya Ports Authority versus Silas Obengele, Civil Appeal No. 38 of 2005* was arrived at before the enactment of the Employment Act, 2007 and thus not relevant in this context. That the claimants do their remittances to the Kenya Revenue Authority and their award should not suffer any such deductions as they will undertake to comply on their own.

4. The Court has already made a finding in the judgement delivered on 13th February 2014 and awarded the claimants as;

Each claimant ... is hereby awarded 3 months' salary as compensation. This will be based on the last salary earned by each of the claimants.

5. This award was on the basis of a finding that the claimants were unfairly declared redundant and in consonance with the provisions of section 49 of the Employment Act, upon a finding that there was such unfairness the Court gave such orders; section 49(1)(c);

(c) The equivalent of a number of month's wages or salary not exceeding twelve months based on the gross monthly wage or salary of the employee at the time of dismissal

6. Thus the last salaries earned by the claimants as awarded by the court included such amounts that bring to the total gross amounts payable to them at the time of their termination. These amounts are to be paid to the claimant subject to the applicable law outlined under section 49(2);

(2) Any payments made by the employer under this section shall be subject to statutory deductions

7. Therefore the judgment amount herein was that gross sum that was last paid to the claimants at the time of their termination which will be paid and or deposited for this purposes subject to the deductions as at section 49(2) of the Employment Act, deductions that are by law required of any employer to so deduct from a salary before payment to the employee. Section 49 clearly sets out the modalities applicable which were put into context by the court in making the final orders that the payable amounts to the claimant is as their last salary, which is the gross amount.

8. Section 74 of the Employment Act; now make it mandatory for all employers to keep their employees records. These are the records the respondent should apply in arriving at the payable amounts due to the claimants.

I therefore direct the respondents to compute the three (3) months' pay due to the claimants based on the last salary earned by each of the claimants, being the gross pay which will be deducted all the statutory dues. This to be done within the next seven (7) days and in the absence of such returns the claimant shall have the right as under section 74(2) of the Employment Act to access such records of the respondent within notice of 24 hours on any working day from 0800 hours to 1600 hours and any subsequent costs thus incurred to be paid by the respondent. Mention on 28th April 2014 to confirm compliance.

Delivered at Nairobi and dated this 17^h day of April 2014.

M. Mbaru

JUDGE

In the presence of

Lilian Njenga: Court Assistant

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