

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO 939 OF 2011

DAUDI KILONZO.....CLAIMANT

VS

SECURITY SEVEN LIMITED.....RESPONDENT

RULING

1. The Claimant's claim was settled by consent of the parties in the sum of Kshs. 60,000. What is in dispute is whether this figure was inclusive of costs. In an affidavit sworn by Andrew Kinyua, the Deputy Organising Secretary of the Kenya Union of Commercial Food and Allied Workers on 21st November 2013, he depones that he was directly involved in the negotiations between the Claimant and the Respondent. Kinyua further depones that he personally agreed with the Claimant's Advocate, Mr. Nyabena Nyakundi that the matter be settled at an all inclusive figure of Kshs. 60,000.

2. In a replying affidavit sworn by Alfred Nyabena, Counsel for the Claimant on 21st January 2014, he depones that his law firm does not have an Advocate by the name Mr. Nyabena Nyakundi who is alleged to have negotiated with Andrew Kinyua. Alfred Nyabena further depones that he has had conduct of this matter and that in the negotiations with the Respondent's representative it was agreed that the case be settled at Kshs. 60,000 plus costs of the suit.

3. The amount of Kshs. 60,000 plus costs was to be paid in the months of October, November and December 2012. The Respondent however failed to honour its obligation but instead forwarded a post dated cheque in partial settlement of the claim on the eve of the hearing then scheduled for 26th October 2012, promising to pay the balance on or before 30th November 2012. The Respondent failed to honour its obligation again prompting the Claimant's Counsel to fix the matter for hearing on 18th June 2013. The second cheque was forwarded on 8th June 2013.

4. The power of this Court to make an order for costs is donated by Section 12(4) of the Industrial Court Act, 2011 and Rule 27(1)(e) of the Industrial Court (Procedure) Rules, 2010. Pursuant to this, I made an order on 30th September 2013 vide which I referred the matter to the Deputy Registrar for assessment of costs and no reasons have been advanced to cause the Court to vary this order. The matter shall therefore proceed before the Deputy Registrar as earlier directed.

5. I make no order for costs in this application.

Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 19TH DAY OF JUNE 2014

LINNET NDOLO

JUDGE

Appearance:

Mr. Nyabena instructed by Nyabena Nyakundi & Co Advocates for the Claimant

Mr. Okao instructed by Okao & Co Advocates for the Respondent