



REPUBLIC OF KENYA  
IN THE INDUSTRIAL COURT AT NAIROBI  
CAUSE NUMBER 23 OF 2012

**BETWEEN**

MARGARET A. OCHIENG.....CLAIMANT

**VERSUS**

NATIONAL WATER CONSERVATION & PIPELINE CORPORATION.....RESPONDENT

RULING

The Court made an Award dated 18<sup>th</sup> March 2014, dismissing the Claim in its totality. In all, the Court found the Claim to have no merit.

The Claimant had sought alternative prayers, with reinstatement or re-engagement of one the part, and terminal benefits and compensation of the other.

All these claims were found to have no merit.

After the decision was made, the Claimant filed a Notice of Appeal and applied for a copy of the Award and Court Proceedings.

She filed an Application for Review of the Award on 26<sup>th</sup> May 2014, in which she argues the Court did not consider her plea for annual leave pay; that she had after the delivery of the Award found a receipt to support her claim for refund of deposit she made with the Respondent of Kshs.10,000, for purchase of an obsolete motor vehicle; and that the Respondent denied her the right to fair labour practices by failing to reply to her letter seeking renewal of the contract.

The Application is supported by the Affidavit of the Claimant, sworn on an unspecified date.

The Respondent filed Grounds of Opposition on 8<sup>th</sup> July 2014. The Application was heard on 10<sup>th</sup> July 2014.

*The Court Finds and Rules:-*

1. The Applicant has not provided any grounds to warrant review as required under Rule 32 of the Industrial Court (Procedure) Rules 2010. The documents attached to the Application should have been produced at the initial hearing. The Applicant has not explained why she did not do this.
2. The Respondent explained in its pleadings and evidence that the Claimant was paid salary for days worked from 1<sup>st</sup> December 2011 to 16<sup>th</sup> December 2011; gratuity; and cash in lieu of leave. In total, she

was paid net benefits of Kshs.1,696,127. This amount included pay for unutilized leave at Kshs.95,224.80. She did not present to the Court the letters from the Respondent dated 17<sup>th</sup> March 2011 and 21<sup>st</sup> March 2011, stating she was owed 79 days of annual leave, at the time the substantive dispute was under consideration.

3. The Claimant sought 109 days of unutilized annual leave in her Claim. She now states in the Application she was owed 79 days. It was for the Claimant to establish her claim. The letters contained in the Application neither support the case for 109 days or 79 days. She applied for 25 days of annual leave from 14<sup>th</sup> December 2010 to 17<sup>th</sup> January 2011. Her leave balance was advised at 79 days for the year 2010/2011. In the letter of 21<sup>st</sup> March 2011, after utilizing the 25 days applied for on 14<sup>th</sup> December 2010, the balance of annual leave was still advised to stand at 79 days for the period 2010/2011. This is not evidence that is consistent, and does not persuade the Court to interfere with its Award.

4. The receipt for Kshs.10,000 as stated above, should have been given at the first instance. The Claimant tendered for a motor vehicle which she describes as obsolete from the Respondent. She did not explain in the main Claim, or Review, if the tender deposit was refundable. The money was paid on 20<sup>th</sup> July 2011, while the Claimant's contract lapsed 5 months later on 16<sup>th</sup> December 2011. She did not show the Court whether there were demands made on the Respondent to refund her money in those 5 months.

5. The Claimant is not barred from seeking review of the Award by the Notice of Appeal. This Court's review jurisdiction is not limited by the appeal process that may be initiated against its decision at the Court of Appeal. If there are matters falling within Rule 32 of the Industrial Court (Procedure) Rules 2010, there is no reason why the Court should not be moved to rectify its record, notwithstanding the filing of an Appeal in the Court of Appeal. If errors or mistakes in a first decision are corrected at the first Court, the Appeal may be rendered unnecessary, and the Parties and the Court of Appeal respectively, relieved the burden of arguing and hearing the Appeal.

6. There is however nothing placed before this Court to warrant interference with the Award. The Court examined all the material placed before it, and concluded the alternative prayers sought, did not have proper foundation in law and fact. The Affidavit in support of the Application does not show the date when it was sworn. It is not a valid Affidavit, and the Court cannot put reliance on it. It does not conform to the provisions of the Oaths and Statutory Declarations Act, Cap 15 of the Laws of Kenya.

***The Application for Review dated 26<sup>th</sup> May 2014, is declined with no order on the costs.***

Dated and delivered at Nairobi this 30<sup>th</sup> day of July 2014

James Rika

Judge