



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT MOMBASA
(BIMA TOWERS)

CAUSE NO. 250 OF 2013

SAMSON NJIGOYA MBUTUCLAIMANT

v

KENYA MARINE & FISHERIES RESEARCH INSTITUTE.....RESPONDENT

JUDGMENT

1. In 2010 the Respondent put in place a Voluntary Early Retirement Scheme due to an unsustainable wage bill. The Claimant was affected and he took early retirement f
2. Samson Njigoya Mbutu (Claimant) was employed by Kenya Marine & Fisheries Research Institute (Respondent) sometime in 1989.
3. rom 1 October 2010.
4. The Claimant's voluntary early retirement benefits was computed as Kshs 942,208/-. The Claimant was paid Kshs 559,694/20 after retention of Kshs 228,593/80 on account of income tax/Pay As You Earn (PAYE).
5. The Claimant contends that he was entitled to full payment of the retirement benefits without deduction/retention of income tax.
6. The Claimant made a demand of the Respondent but nothing was forthcoming. On 12 August 2013 the Claimant lodged a Memorandum of Claim against the Respondent seeking the amount deducted/retained as income tax.
7. The Respondent filed a Memorandum of Reply on 13 September 2013 stating that the Claimant was paid full voluntary early retirement benefits save for money deducted and retained on account of Pay as You Earn.
8. The Respondent pleaded that it had sought the authority/approval of the National Treasury to have the voluntary early retirement benefits of its staff who retired exempted from payment of PAYE but none had been given.
9. According to the Respondent, payment of PAYE is a mandatory requirement of the law and that it could not release the money retained on account of PAYE until exemption was given.
10. The Respondent exhibited several correspondences to show that an application for exemption from

income tax of the retirement benefits had been made to the relevant entity and that deliberations to get the exemption were on going as late as 2013, but had not been concluded.

11. The Claimant initially made oral submissions on 29 October 2013 before getting legal representation. In the course of the submissions, the Court thought it prudent to adjourn hearing for the Respondent to get confirmation from the National Treasury how far the question of grant of exemption had reached.

12. On 10 December 2013, the firm of Lamanya Katee & Co. Advocates came on record for the Claimant and on 2 April 2014 the Claimant's Advocate informed the Court she wanted to file an expert's report before hearing could proceed. The Court adjourned the hearing to enable the Claimant file the report. The report was never filed.

13. On 16 July 2014, Ms. Omolo for the Claimant and Mr. Molenje for the Respondent informed the Court that they had agreed to have the Cause determined on the basis of pleadings, documents on record and written submissions to be filed.

14. The Court therefore directed the Claimant to file and serve his submissions on or before 30 July 2014 and the Respondent to file and serve its submissions on or before 15 August 2014. By the time of writing this judgment, the submissions were not on record.

15. The Court must express its displeasure with this failure by the parties to comply with its peremptory directions to file and exchange submissions.

16. On the merits, the Claimant has failed to lay any statutory foundation for his claim to be paid monies deducted/retained on account of income tax/PAYE. The Income Tax Act is clear that retirement benefits are subject to tax unless exemption has been granted. Under section 49 of the Employment Act, 2007, even court awards as claimed herein, are subject to statutory deductions.

17. Although the Court sympathises with the Claimant, the Claimant had benefit of legal counsel and he should have been advised accordingly and correctly. The Memorandum of Claim filed in Court on 12 August 2013 has no merit and is dismissed with no order as to costs.

18. The Claimant may wish to pursue the issue of grant of exemption with his former employer and the National Treasury.

Delivered, dated and signed in open Court in Mombasa on this 9th day of September 2014.

Radido Stephen

Judge

Appearances

For Claimant Ms. Omolo instructed by Lamanya Katee & Co. Advocates

For Respondent Mr. Molenje, Senior Legal Officer, Federation of Kenya Employers