



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 952 OF 2011

(Before D.K.N. Marete)

PETER GIKARIA WAMBUGU.....CLAIMANT

Versus

MUHOTETU FARMERS CO-OPERATIVE SOCIETY.....RESPONDENT

RULING

This is an application dated 13th June, 2013 and filed on 16th instant. It seeks the following orders of court;

1. *THAT this Honourable Court be pleased to review its judgment delivered on 7th February, 2013 and include unpaid salary of Kshs.64,000/-.*
2. *THAT this Honourable Court be pleased to review its judgment delivered on 7th February, 2013 and expressly award the Claimant the costs of the suit.*
3. *THAT the costs of this application be paid by the Claimant.*

and is grounded on

- a) *On 7th February 2013, this Honourable Court delivered its judgment and among other awards ordered the claimant to resume employment forthwith, and for payment of unpaid salary from February 2010 to January 2013.*
- b) *The Claimant resumed employment as ordered, but the resumption was short lived as the Respondent sought for and obtained stay orders, and on 24th April 2014 the said orders were set aside.*
- c) *The Respondent has not paid in particular, the decreed unpaid salary, and in addition has not also paid Claimant's salary of Ksh.64,000/- for the period running from February 2013 to May 2014, and as such it is in the interest of justice that the said sum of Ksh.64,000/- be included in the decree to be issued.*
- d) *In its aforesaid judgment, this Honourable Court found that the claimant was entitled to the relief sought in his statement of claim and by implication the costs of the suit, but did not expressly state that the claimant was entitled to costs.*

e) *There will be no prejudice caused to the Respondent, and as such it is in the interest of justice for the current application to be allowed.*

The application is supported by the supporting affidavit of Peter Gikaria Wambugu. The application is not defended, or at all.

The claimant's case is that he filed a statement of claim dated 23rd May, 2010 and on hearing the court awarded judgment in his favour. This was as follows;

3 *That the respondent is ordered to pay the claimant for his emoluments for 33 months with effect from February, 2010 to January, 2013 at Kshs.4,000.00 all totaling Kshs.132,000.00*

4 *That the respondent is ordered to pay the claimant his rest days and public holidays served during employment numbering 407 at Kshs.268 all amounting to Kshs.109,076.00*

The claimant/applicant's case is that the respondents sought to set aside these orders of court but the same was denied by the dismissal of the application on 24th April, 2014 where the court upheld its orders for reinstatement. The claimant further avers that the respondent has not paid the decretal sum or even salary from the date of judgment to May, 2014 all amounting to Ksh.64,000.00. He also prays that this court awards him cost of the claim and other subsequent applications in this cause.

10. *THAT when the matter came up for taxation of costs, the taxing master found that the judgement had not expressly stated that I was entitled to costs, and it is based on this finding that I do pray that this Honourable Court expressly states that I am entitled to costs of the suit.*

I have scrutinized this application and found it to be an application for review. It is not defended. The evidence of the claimant is that the respondents have neither met the decretal sum no paid his accrued salaries due after reinstatement by the orders of court and dismissal of the application to set aside the same. The claimant/applicant seeks to be paid his monthly salary between the date of judgment to the time of filing this application all amounting to Kshs. 64,000. He has not demonstrated whether he is still in the respondent's employment or otherwise. This is a grey area.

I, however think this is not a suitable case for review bearing in mind the circumstances of the case. The issue for review on unpaid salary of Kshs. 64,000 was not on trial but an off shoot of the judgment of court. It can only be tried at another forum. The issue of costs was considered at the time of judgment but found untenable in the circumstances. Having awarded relief to the extent of Kshs. 257, 960 to the claimant as variously enlisted in the judgment, it was considered adequate remedy in the circumstances. Any further award would cripple the fledgling enterprise which this court considers the respondent to be. This is the balancing act of this court and I restate the same.

I am therefore inclined to dismiss this application with no order as to costs.

Delivered, dated and signed this 7th day of November 2014.

D.K. Njagi Marete

JUDGE

Appearances

1. Mr. Nderitu instructed by Nderitu Komu & Company Advocates for the Claimant/Applicant.
2. Mr. Githaiga instructed by Robert Githaiga & Company Advocates for the Respondents.