



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 285 of 2010

HELLEN WAIKUNU..... CLAIMANT

-VERSUS-

DOTSAVVY LIMITED.....RESPONDENT

RULING

The Claimant herein filed a claim against the Respondent seeking the following orders:-

- a) A sum of Kshs.235,436/24.
- b) Compensation for loss of employment equivalent to Kshs.421,551/911 being one year salary at Kshs.35,129/33 per month.
- c) Interest on (a) above from 4th June 2009 till payment in full.
- d) Costs of this claim.
- e) Any other relief that this Court may deem fit to grant.

The award was delivered on 15th December 2011 and the Claimant was granted the following orders:-

1. **THAT** the Claimant suffered unlawful loss of employment.
2. **THAT** the Claimant be paid the following terminal dues by the Respondent:-
 - a. one month's salary in lieu of notice - Kshs. 35,129/33
 - b. commission from business brought - Kshs.155,623/00
 - c. salary for 4 days worked in June 2009 - Kshs. 4,683/91
 - d. one month's salary as compensation- Kshs. 35,129/33
for unlawful loss of employment.

Total:- Kshs.230,565/57

By a Memorandum of Review dated 16th January 2012 and filed in Court on 31st January 2012, the Claimant seeks review of the award on the following grounds:-

1. The Award was silent on the issue of Costs and it would be just if the Court would address the issue of Costs.
2. The learned Judge having found that the Claimant had succeeded in her claim ought to have awarded costs of the cause to the Claimant unless there was a just reason for failing to do so.
3. The Claimant has spent her meager resources to finance this cause and it would be just and fair to award her costs in light of the fact that she succeeded in her claim.

a) This application for review be allowed with costs.

b) The Judgement of the Honourable (Mr) Justice Kosgey be varied to extent that the costs of the claim are awarded to the Claimant.

The Respondent did not file any Reply to the Memorandum of Review. The application for review of award came up for hearing on 22nd March 2013 when Mr. Mwangi represented the Claimant and Mr. Khasiani appeared for the Respondent.

Mr. Mwangi reiterated the contents of the Memorandum of Review. The only reasons advanced in the Memorandum of Review in support of the application are the following:-

1. **That** the Claimant was successful in her claim.
2. **That** the award is silent on the issue of costs.
3. **That** the Court ought to have addressed the issue of costs in the award.
4. **That** costs follow the event
5. That the Claimant struggled to pay legal fees to her advocates and it would only be fair that she be awarded costs of the claim in order for the award to fulfill its objective of indemnifying the Claimant for her loss of employment and that the Court should have given reasons for not awarding costs.

Mr. Khasiani on behalf of the Respondent argued that Section 12(4) of the Industrial Court Act provides that award of costs is discretionary and not compulsory, that if judgement is silent on a claim then that prayer is deemed to have been rejected, that the grounds for which the Claimant had sought review is a matter that should be sought through appeal.

I have considered the Application for Review and the arguments of Counsel for both parties.

The Claimant's Counsel did not refer me to any authority. I believe he had in mind the provisions of Section 27 of the Civil Procedure Act.

The Industrial Court Act provides for award of costs at Section 12(4) as follows:-

In proceedings under this Act, the Court may, subject to the rules, make such orders as to costs as the Court considers just.

The Civil Procedure Rules do not apply to proceedings in the Industrial Court. It is the Industrial Court (Procedure) Rules 2010 that apply. Those rules do not contain any provisions similar to Section 27 of the Industrial Court Act. Costs in the Industrial Court are only payable where the Court expressly awards costs in its decision.

When considering the issue for costs recently in **MOMBASA INDUSTRIAL COURT CAUSE NO.156 OF 2012 (PREVIOUSLY NAIROBI CAUSE NO.2034 OF 2011): KENYA CHEMICAL & ALLIED WORKERS UNION –VS- BAMBURI CEMENT LTD**, Justice Radido Stephen observed as follows:-

“Unlike the Civil Procedure Act which has provided that award of costs is discretionary and costs shall follow the event the Industrial Court Act provides that costs are discretionary and that the Court shall make a costs order which is just. The practice of Industrial Courts in other jurisdictions is that the default rule regarding costs is not to make a costs order unless in exceptional circumstances.”

I agree with the sentiments expressed by Hon. Justice Radido in that case.

Since the award is silent on costs, in my understanding and going by the holding on costs by Hon. Justice Radido in the case quoted above, I find that the claim for costs was not awarded by the Court as there were no exceptional circumstances that warranted the award of costs to the Claimant.

For these reasons I dismiss the Claimants application for review of the award of Hon. Justice Kosgei of 15th December 2011.

There shall be no orders for costs.

Orders accordingly.

Read in Open Court and signed on this 3rd day of May 2013.

Hon. LADY JUSTICE MAUREEN ONYANGO

JUDGE

In the presence of: _____ for Claimant

_____ for Respondent