



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO. 183 N OF 2009

PHILIP N. ONCHWARI

CLAIMANT

v

GUSII MWALIMU SACCO LTD

RESPONDENT

RULING

1. The Claimant filed a Memorandum of Claim on 28 April 2009 against the Respondent and the issues in dispute were stated as wrongful termination of employment and claim for damages. The Respondent filed a Response on 25 May 2009.
2. The Cause was heard by Chemmutut J (as he then was) on 23 July 2009 and 13 May 2010. On 1 September 2010 the Judge informed the parties that he would deliver an award on notice.
3. Chemmutut J ceased acting as judge in 2012 before he could prepare or deliver an award. The circumstances are in the public domain.
4. When new judges came into office in July 2012 there were nearly 300 files with pending awards. The files were distributed to all the judges and the instant file was allocated to me.
5. The Deputy Registrar notified the parties through letter dated 10 September 2012 to appear before me on 21 September 2012 for directions. Due to official engagements none of the Judges sat on 21 September 2012 and the Deputy Registrar caused a general notice to be put up in the notice board and the cause list that this matter would be mentioned on 24 September 2012.
6. On 24 September 2012 none of the parties appeared. In the meantime, I was transferred to Mombasa and I requested my brother Nzioki wa Makau J to take directions on my behalf. The Deputy Registrar therefore wrote to the parties on 20 November 2012 to appear before Nzioki wa Makau J on 29 November 2012 for directions. None of the parties appeared.
7. On 13 May 2013 the Deputy Registrar wrote to the parties through recorded EMS delivery to appear before me on 4 June 2013 for directions or else the Cause would be dismissed. Because I was out of the country the file was placed before Makau J and the Claimant appeared in person. There was no representation for the Respondent. Makau J. directed that the matter be mentioned before me on 15 July 2013.
8. On 15 July 2013 none of the parties appeared though the Deputy Registrar had notified them through letter dated 27 June 2013.
9. In the meantime the parties had filed consent in Court on 12 July 2013 that the matter be transferred to Industrial Court of Kenya at Kisumu for disposal.
10. The rules of the Court have not explicitly provided for how to proceed with matters which were heard by the judges of the previous Court. Rule 21 of the Industrial Court (Procedure) Rules 2010 allow the court subject to the agreement of the parties to determine a suit on the basis of pleadings,

- affidavits, documents filed and submissions.
11. I had intended to get the agreement of the parties on whether to proceed on the basis of rule 21 and prepare an award on the basis of the proceedings taken before Chemmutut J (as he was then) and the record. But they have now agreed to have the matter disposed off in Kisumu. On the face of the record, it appears the cause of action arose in Kisii which is nearer Kisumu.
 12. Hearing the Cause in Mombasa or Nairobi, it appears would mean the parties incurring significant costs. That would not be just to the parties. This Cause is one of the older ones in the Court and it should be determined expeditiously.
 13. If the parties had agreed I would have prepared and delivered an award but since they prefer the suit to be disposed off in Kisumu I do direct that this file be transmitted to the Industrial Court of Kenya at Kisumu for disposal.
 14. The Deputy Registrar of this Court is directed to notify the parties that the file has been taken to Kisumu and they should appear at a convenient date before the Deputy Registrar Kisumu/Judge for further directions.

Delivered, dated and signed in Mombasa on this 27th day of September 2013.

Justice Radido Stephen

Judge