



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 120 OF 2007

BETWEEN

KENYA BUILDING CONSTRUCTION TIMBER AND ALLIED INDUSTRIES EMPLOYEES
UNION.....CLAIMANT

VERSUS

MORRIS AND COMPANY (2004) LIMITED.....RESPONDENT

Rika

CC. Mr. Kidemi

*Ms. Omondi holding brief for Ms. Guserwa instructed by J. A. Guserwa & Company Advocates for the
Claimant*

Ms. Ameyo instructed by Okong'o, Wandago & Company Advocates for the Respondent

RULING

The Respondent filed an application dated 28th June 2013, seeking to set aside decree issued on 20th June 2013. The Respondent argues that the decree was not extracted in accordance with the Award of Hon. Justice Paul Kosgei, delivered on 9th September 2008.

The application was heard on 18th September 2013.

The Respondent submits that the decree as extracted, and sought to be executed, adopts six months' salary in compensation; the Court granted one month salary in compensation. Underpayments were not part of the Award. The Claimant has sought to execute on underpayments.

The Respondent argues further that it has recently discovered its Human Resource Manager colluded with the Claimant and failed to produce the Muster Roll. The actual number of Employees, and their years in service, was not considered. There were double entries, resulting in unjust enrichment.

The Respondent states the actual decretal amount should be Kshs.2,905,397, not Kshs.9 million as given by the Claimant.

The Claimant opposes the application through an affidavit sworn by its General Secretary. The

Respondent has dragged the Claimant to the High Court on application for Judicial Review; the application was dismissed. The Respondent returned to the Industrial Court and sought leave to appeal; the application was dismissed. The Court observed that figures are factual. The Muster Roll was within the Claimant's knowledge at the trial. The dispute has been pending for six years. The Claimant submits that the Respondent is merely delaying settlement of the decree. The application should be dismissed.

The Court Finds and Orders:-

1. The Award by Hon. Justice Paul Kosgei was in the following terms, on the payment of monetary items:-
 - a. 1 month pay in lieu of notice for employees who served for less than 3 years.
 - b. 2 months' pay in lieu of notice for employees who served for more than 3 years.
 - c. Accrued leave
 - d. Gratuity at the rate of 14 days' pay for every completed year of service for employees who served for 2 years and above.
 - e. One month salary in compensation for unlawful loss of employment.
2. It would assist the Claimant in executing the Award, if the Claimant strictly adheres to the terms of the Award. There was no compensation the equivalent of six months' salary, given in the Award. Compensation was granted at the equivalent of 1 month salary. The Award suggest the Grievants earned between Kshs.225 and Kshs.400 per day. The tabulation prepared by the Claimant indicates compensation ranging from Kshs.42,876 to Kshs.90,593 for various individual employees. What are these amounts based on?
3. There are figures tabulated as underpayments. There was no order made in the Award for underpayments. These figures should be omitted.
4. There is no merit in the Respondent's submissions on the Muster roll. A Muster Roll is a record maintained by the employer. There has been no suggestion in various Court appearances, made by the Respondent that any of its officers colluded with the Claimant to present false evidence on the number of employees and their years of service.

IT IS ORDERED:-

- a. ***The application by the Respondent is allowed with respect to the two items – compensation and underpayments.***
- b. ***The Claimant shall redo its tabulation based on 1 month salary in compensation and omitting underpayments altogether.***
- c. ***Other figures to remain as tabulated.***
- d. ***Should be there any more misunderstanding on the figures, the dispute shall be placed before the Deputy Registrar for reconciliation of the figures.***
- e. ***Execution to proceed forthwith based on the clarification made herein.***

Dated and delivered at Nairobi this 20th day of December 2013

James Rika

Judge