



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 2303 OF 1995**

NAZIR MWITHWANI ..... PLAINTIFF

VERSUS

AVOW MARKETTING SERVICES (K) LTD ..... DEFENDANT

**J U D G E M E N T**

The plaintiff filed this suit against the defendant on 20th June, 1995 to claim a sum of Kshs.472,745/=. This money was made up as follows:-

1. Kshs. 437,745 - Provident Fund
2. Kshs. 35,000 - Accrued leave

The plaintiff had been employed with the defendant from 21st November 1979 to 19th April, 1994 when he gave 3 month's notice to resign from employment. The notice was intended to expire around 18th July, 1994 but because of pending leave, the plaintiff utilized part of it as notice period and he left the defendants' employment in June 1994.

But during his employment, some money was deducted from his salary on account of what the plaintiff called Pension Fund which he was entitled to on leaving employment.

However, when he resigned from the defendant's employment and requested to be paid this money, he was not so paid, though the defendant promised to forward the amount thereof to him when it received it from the broker, Minet ICDC.

That to the date of filing this suit, the sum sought had not been paid to him, hence the case subject to this judgement.

The case was fixed for hearing on 8th May, 2001, and though counsel for the defendant was served with a hearing notice, neither counsel nor the defendant appeared, hence the same was heard ex parte.

The plaintiff testified in the case and produced relevant documents of employment and resignation. He also produced a certificate of membership of the defendants' retirement scheme to which his deductions were remitted.

There was also a reply to the demand made to the defendant by counsel for the plaintiff before this suit was filed (exh.9) in which the defendant acknowledged that the plaintiff was entitled to final dues which the defendant was willing to settle, and copy of a voucher (exh.10) forwarding cheque number 4569 to the defendant for a sum of Kshs.437,745/= being withdrawal benefits for the plaintiff. It was Minet ICDC who forwarded this cheque.

The plaintiff himself testified that he had visited the defendants offices several times at the latter's request but that no such dues were paid, hence this suit.

Regarding 36 days accrued leave the plaintiff withdrew this claim, otherwise his evidence or withdrawal benefits or what he called pension fund, stands unchallenged due to the non-appearance of the defendant to testify against it.

Consequently, I enter judgement for the plaintiff against the defendant and award him a sum of

Kshs.437,745/= plus costs of the suit and interest to accrue from 5th October, 1994.

Delivered and dated this 15th day of May, 2001.

**D.K.S AGANYANYA**

**JUDGE**