



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1272 OF 2017**

(Before Hon. Lady Justice Maureen Onyango)

**JOSEPH KIPKURUI MARITIM.....CLAIMANT**

**VERSUS**

**TRANSFLEET LIMITED.....RESPONDENT**

**JUDGEMENT**

1. Vide his Statement of Claim dated and filed in Court on 6<sup>th</sup> July, 2017, the claimant avers that his employment with the Respondent, a Limited Liability Company was unfairly and unlawfully terminated and failure by the Respondent to pay terminal benefits owed to him.

2. In his Claim the Claimant maintains that he was employed by the Respondent on 6<sup>th</sup> May, 1992 in the position of Security Officer. He further maintained that he performed his duties diligently and to the Respondent's satisfaction and as a result climbed through the ranks to the position of Chief Security Officer.

3. He avers that on 2<sup>nd</sup> November, 2016 the Respondent arbitrarily decided to terminate his employment without just cause or reason. He maintained that his termination was unlawful, unfair and un-procedural in the circumstances.

4. He was aggrieved by the Respondent's decision to terminate his employment and its subsequent failure to settle his terminal dues despite tabulating the same and issuing him with a final account (Annexure 2 in his statement of Claim), which he duly accepted. The Claimant filed this instant suit seeking the following:-

- a. Kshs.1,104,600/- being the Claimant's terminal benefits
- b. Costs of this suit.
- c. Interest on (a) and (b) above at the Court rates
- d. Any other relief that this tribunal may deem fit and just to grant.

5. The Respondent despite being served with the summons and the memorandum of claim failed to enter appearance and file its defence in this matter. The matter therefore proceeded as an undefended claim. The Claimant filed his witness affidavit/witness statement and written submissions.

**Claimant's Case**

6. In his witness affidavit sworn on 8<sup>th</sup> November, 2021 the Claimant reiterated the averments made in his statement of claim. He maintained that his employment was unlawfully and un-procedurally terminated by the Respondents herein.

7. He further averred that the Respondent has since failed and/or ignored and/or refused to settle his terminal dues despite issuing him with a tabulation of dues payable to him upon his separation.

8. He therefore urged this Honourable Court to allow his Claims in terms of the reliefs sought therein.

## **Claimant's Submissions**

9. In his submissions the Claimant urged this Court to find that his termination was unlawful and unfair and proceed to award him his terminal dues as tabulated by the respondent and attached to his statement of claim at page 12.

## **Determination**

10. Having considered the pleadings, evidence and submissions filed by the Claimant the following are the issues for determination:

- i. Whether there existed an employer-employee relationship between the Claimant and the Respondent herein;
- ii. Whether the Claimant is entitled to the reliefs sought

## **Whether there existed an employer-employee relationship between the Claimant and the Respondent herein**

11. This being an undefended Claim this Court must determine, as a preliminary issue, whether or not there existed an employer – employee relationship between the Claimant and the Respondent herein.

12. The determination of the other heads of claims advanced by the Claimant will depend on whether the Court finds that there was an employment relationship between the Claimant and the Respondent.

13. In the case of **Monica Kanini Mutua v Al-Arafat Shopping Centre & another [2018] eKLR**, the Court held that in an undefended claim, it is trite that the claimant establishes all the facts of the claim and must establish the existence of an employment relationship with the respondent as a preliminary issue before establishing the alleged unfair termination of the employment.

14. To prove of his employment relationship with the Respondent the Claimant attached the following documents:-

1. A memo from the Respondent's Personnel & Administration Officer dated 21<sup>st</sup> January, 2014 on his salary increment.
2. A copy of his March 2014 pay slip.
3. List of Respondent's Members of staff (security department) as at March 2016
4. Tabulation of final account owed to the claimant as prepared by the Respondent herein.

15. Based on the above documents I find that the Claimant has proved that he was indeed under the Respondent's employment.

## **Whether the Claimant is entitled to the reliefs sought**

16. The Claimant did not seek any compensation for unfair termination. All he seeks is release of this terminal benefit as tabulated by the Respondent.

17. The Claimant relies on the tabulation of terminal dues prepared by the Respondent and attached to his Statement of Claim at page 12.

18. The Respondent having failed to give any evidence to rebut this assertion, this Court finds that the Claimant is entitled to the terminal benefits and awards the Claimant the same at **Kshs.1,104,600/-** as prayed.

19. The Claimant is also awarded costs of this suit and interest at Court rates from the date of filing suit until settlement in full in view of the fact that these were terminal benefits payable on the date of termination of employment.

20. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 17<sup>TH</sup> DAY OF FEBRUARY, 2022**

**MAUREEN ONYANGO**

**JUDGE**

## **ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to

every person under Article 48 of the Constitution and the provisions of **Section 1B** of the **Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**MAUREEN ONYANGO**

**JUDGE**