



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 199 OF 2017

WILLIAM OCHIENG ORONDO.....CLAIMANT

v

WIGOT GARDENS LTD.....RESPONDENT

JUDGMENT

1. William Ochieng Orondo (the Claimant) was offered employment as the General Manager by Wigot Gardens Ltd (the Respondent) through a letter dated 26 September 2014.
2. On 30 May 2016, the Claimant tendered a 3-month notice of resignation.
3. When the Respondent received the notice, it wrote to the Claimant on 17 June 2016, asking him to reconsider the decision.
4. The Respondent and the Claimant then engaged in discussions, and the Claimant gave specific proposals through a letter dated 4 July 2016.
5. The Respondent did not respond to the letter, but on 30 August 2016, the parties entered a new contract referenced *Management Consultant Contract*. The contract was to run for 2-years.
6. However, on 29 November 2016, the Claimant gave another notice of resignation.
7. The Respondent accepted the resignation on 6 December 2016 and requested the Claimant to prepare a detailed hand-over programme.
8. On 12 May 2017, the Claimant sued the Respondent, alleging breach of contract (salary arrears, leave pay and leave allowance totalling Kshs 586,666/-)
9. The Respondent filed a Response and Counterclaim on 23 June 2017 in which it was pleaded that the Claimant had been paid his salaries up to 30 August 2016 and that leave allowance was not part of the contract.
10. The Respondent counterclaimed against the Claimant for Kshs 359,940/- being salary advance, loan balance, outstanding bills, and pay in lieu of notice of Kshs 525,000/-.
11. The Cause was heard on 25 February 2021 and 18 January 2022. The Claimant and a Director with the Respondent testified.
12. The Claimant filed his submissions on 13 March 2022, while the Respondent filed its submissions on 17 March 2022.
13. The Court has considered the pleadings, evidence, and submissions.

Salary arrears for August 2016

14. An employee is entitled as of right to earned salary. The Claimant testified that he was not paid his salary for August 2016.
15. The Respondent's witness testified that the Claimant was paid his August 2016 salary.

16. However, the Respondent did not produce any records to show that the Claimant's August 2016 salary of Kshs 160,000/- was paid and considering section 10(7) of the Employment Act, 2007, the Court will allow this head of the claim.

Leave

17. The Claimant testified that he did not go on leave during the contract term and was thus entitled to Kshs 320,000/- as commuted leave.

18. The Respondent's witness admitted that the Claimant had accrued leave of 25.63 days by the time of separation, amounting to Kshs 136,688/-.

19. Ordinarily, it is the employer who keeps employment records. The Respondent's assertion that the Claimant had a balance of 25.63 leave days translating to Kshs 136,688/- was not questioned, and the Court finds that the Claimant was entitled to the same on account of leave.

Leave allowance

20. The Claimant sought Kshs 106,666/- being leave allowance. The Respondent's witness testified that the contract in place did not provide for leave allowance.

21. The Court declines to allow this head of the claim because the Claimant's contract did not provide for payment of leave allowance.

22. The Court finds that the Respondent owes the Claimant Kshs 296,688/- being salary arrears and accrued leave.

Counterclaim

23. The Respondent asserted that the Claimant acknowledged through an email dated 18 October 2016 that he owed the Respondent loan balance, salary advance and outstanding bills of Kshs 359,940/-.

24. The witness further testified that the Claimant did not give 3-months' notice of resignation as set out in the contract.

25. The Claimant admitted that he had taken a Kshs 400,000/- loan from the Respondent during cross-examination. He stated that he had a loan balance of Kshs 45,000/-.

26. The Claimant also admitted in the email of 18 October 2016 that he owed the Respondent Kshs 359,940/- by the time of separation. He is found liable to pay the same on account of the loan balance, salary advance and outstanding bills.

27. Clause 4.9 of the Consultant Contract provided for 3-months written notice or pay in lieu of notice.

28. The Claimant did not give the 3-month notice, and the Court finds him liable to the Respondent in the cumulative sum of Kshs 525,000/-.

29. Reconciling what the parties owe each other, the Court finds that after setting off, the Claimant is indebted to the Respondent in the sum of Kshs 588,252/-.

Conclusion and Orders

30. From the foregoing, the Court finds that after set-off, the Claimant owes the Respondent Kshs 588,252/- and judgment is entered in favour of the Respondent in the said amount.

31. The amount to attract interest at court rates from the date of judgment until payment in full.

32. Each party has succeeded. No order on costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 30TH DAY OF MARCH 2022.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimant Anyumba & Associates Advocates

For Respondent Kidenda Onyango Anami & Associates

