



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 80 OF 2020

LIVINGSTONE AURA AMBUNYA.....CLAIMANT

VERSUS

TRIDENT PLUMBERS LIMITED.....RESPONDENT

JUDGMENT

1. The suit was filed on 10/2/2020 and is undefended. The respondent despite service failed to file a statement of defence nor participate in the proceedings.

2 The claim is for liquidated damages as set out in the Statement of Claim at paragraph 17 as follows: -

a) Payment of 10 days prorated leave for five months January to May, 2019 – Kshs. 30,000.

(b) Gratuity calculated at 15 days' salary for 33 years of service in the sum of Kshs. 1,485,000.

(c) Overtime not paid for a period of thirty six months at 225 hours at 1.5 times of the salary in the sum of Kshs.1,879,200.

and

(a) Unpaid house allowance for 36 months at 15% of the basic

salary – Kshs. 486,000.

Total claim – Kshs. 3,880,200.

3.. The facts in support of the claim are that the claimant was verbally employed by the respondent on 18th July, 1986 as a Supervisor.

4. The claimant worked for a period of 33 years and had a clean record until he left employment on 27th May, 2019.

5. The respondent has failed to pay the terminal benefits due to the claimant since the time of severance.

6. The claimant was paid a salary of Ksh. 90,000 per month.

7. The claimant at times worked for 24 hours and without being paid overtime.

8. The company prepared a written contract for the claimant after 30 years of service which was signed by the parties on 2nd January, 2019. The contract did not address the part **“30 years of service.”**

9. The claimant seeks payment of terminal benefits set out in the Statement of Claim. The claimant adopted his witness statement dated 10/2/2020 as his evidence in chief.

10. The claimant produced the contract of employment dated 2/1/2019 signed by himself and the respondent.

11. In terms of the Agreement, the claimant was paid a gross salary of Kshs. 90,000 per month. The agreement also stipulated other benefits including insurance cover, fuel reimbursement, company car and Airtime.

12. The contract also provided under clause 4.2.1 that the claimant as a supervisor may be required to work over and above the office hours of 7.45 am to 17.00 P.M from Monday to Friday without any extra payment.

13. The claimant was entitled to 26 days annual leave and statutory deductions were made on the gross salary.

14. The contract presented by the claimant himself does not provide for payment of gratuity for each completed year of service. The claimant did not adduce any evidence in support of this claim. Similarly, the claimant did not provide any evidence that he was entitled to payment of overtime in terms of his contract of service nor did he demonstrate how many extra hours were worked and during which particular days. The general claim for payment of overtime for thirty-six months served does not suffice.

15. With regard to the claim for house allowance, the same is not supported by the contract of service which clearly provided for payment of Ksh.90,000 monthly gross salary. The claimant has failed to adduce any evidence that he was entitled to payment of house allowance in addition to the gross monthly salary he received until he left employment.

16. Accordingly, the claim by the claimant for payment of gratuity, overtime and house allowance have not been proved on a balance of probabilities despite failure by the respondent to defend the claims.

16. The same are dismissed for want of proof.

17. The only claim owed by the claimant is for payment of untaken prorata leave days for the period January to May, 2019 when he left employment. This claim is granted accordingly.

18. In the final analysis judgment is entered in favour of the claimant against the respondent for a sum of Kshs. 30,000. The amount is payable with interest at Court rates from date of filing suit till payment in full. The respondent to pay costs of the suit.

19. The rest of the claims are dismissed for want of proof.

DATED AND DELIVERED AT NAIROBI THIS 10TH DAY OF JUNE, 2021.

MATHEWS N. NDUMA

JUDGE

ORDER

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this Judgment has been delivered to the parties online with their consent. 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 18 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.

MATHEWS N. NDUMA

JUDGE

Appearances

Shichanya for claimant

Ekale – Court Assistant.