



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 2455 OF 2017**

*(Before Hon. Justice Ocharo Kebira)*

**JAMES MUSYOKA PAUL..... CLAIMANT**

**VERSUS**

**COUNTRYSIDE DAIRY LIMITED.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Claimant got into the employment of the Respondent company on the 19<sup>th</sup> March, 2017, as a commercial manager. The employer-employee relationship that had been created, ran into turbulence, shortly after commencement. The Claimant resigned, on or about 15<sup>th</sup> June, 2017. claiming that a situation created by the Respondent constrained him to resign and that he was not remunerated for the entire period he worked for the Respondent, the Claimant instituted this claim for 3 months consolidated salary, general damages and unpaid leave.

2. The Respondent upon being served with the summons to enter appearance, did enter appearance and file a memorandum of reply. The matter consequently got destined for hearing on merit.

3. Imperative to state that the matter came up for hearing on the 12<sup>th</sup> August 2021, when the Claimant testified and closed his case. The matter was subsequently adjourned at the instance of counsel for the Respondent on an account that counsel Cheronno who had a personal conduct of the matter had travelled home for personal issues, too, the Respondent did not have its witness present in Court. The matter got adjourned to 13<sup>th</sup> October 2021 for defence hearing. On the 13<sup>th</sup> October 2021, counsel Cheronno for the Respondent was prompted to close the Respondent's case as her client did not have a witness to present its case in defence. Then the Court directed the parties to file written submissions on the matter within specific time lines. The parties complied.

**The Claimant's case**

4. The Claimant presented his case on the 12<sup>th</sup> August 2021. He moved the Court to adopt the contents of his witness statement that was filed contemporaneously with the statement of claim on the 11<sup>th</sup> December 2017, as his evidence in chief. The Court so adopted the contents. The Claimant further moved the Court to admit the documents that were filed on the 11<sup>th</sup> December 2017 under a list of even date, and those that were filed under a supplementary list of documents dated 10<sup>th</sup> August 2021, to be admitted as his exhibits. There was no protestation by counsel for the Respondent, the documents were admitted as exhibits 1 – 15.

5. The Claimant stated that he was appointed by the Respondent as a commercial manager, through a letter of appointment dated 15<sup>th</sup> March, 2017. His salary was Kshs. 400,000 per a month, broken down into basic salary of Kshs. 300,000, Kshs. 60,000 housing allowance and Kshs. 40,000 transport allowance.

6. The Claimant stated that a few days into the employee-employer relationship created courtesy of the aforesaid letter, it came to his attention that the Respondent company had appointed a third party for the same post that he had been appointed for. He stated that he immediately brought this situation to the attention of managing director and sought that he corrects the situation.

7. The Respondent did not address issue, this caused a lot of confusion in the market and frustration on the part of the Claimant. The frustration was heightened by the fact that for the month of March and April, though he was working, he had not been paid his dues.

8. The Claimant asserted that due to afore-stated frustration, he was constrained to, on the 15<sup>th</sup> May 2017, put in a letter signaling his

intention to resign. He gave a one month's notice. He handed the letter to the managing director, in the board room. He served his period notice up to 15/06/2017, when he quit.

9. He asserted that his resignation was purely occasioned by the unconducive environment that was created by the Respondent.

10. He stated that upon resignation, he was not paid his 3 (three) months' consolidated salary, Kshs. 1,200,000. He stated further that he had earned 7 days leave left for which prorated he should be compensated to an extent of Kshs. 142,857.

11. The Claimant asserted that the Respondent breached the contract of employment, consequently placing him in the path of entitlement to general damages for breach of contract. He assesses the general damages at Kshs. one million (1,000,000).

12. The Claimant was cross-examined by counsel Cheronu. He asserted that he was not alleging that he was replaced by another employee but that the Respondent had engaged a 3<sup>rd</sup> party to perform similar duties like the ones he was supposed to discharge. The person had an arrangement with the managing director. The managing director was his immediate supervisor, reason why he raised the issue with him.

13. Asked to demonstrate what prove he had that he worked up to the 15<sup>th</sup> June 2017. He stated that the email correspondences would. He pointed out that since he would not work in isolation from the other employees, some of those email correspondences are to his fellow employees.

14. He further stated, in admission to a proposal that was put across to him by counsel for the Respondent, that he wrote an email to one Mr. James whom he came to know as an investor in the company as he used to attend board of directors' meetings. The investor responded and urged him to have the matter sorted out internally.

15. He stated that the managing director received the letter read it and wished him well. He did not acknowledge receipt of the letter in writing.

16. The Claimant stated that he had no document to demonstrate how he arrived at the Kshs. 1,000,000 (one million) that he was claiming as general damages.

17. In his evidence in re-examination, stated that he came to discover that the person was a friend to the Managing Director. They were in college together.

18. He asserted that an employee who is under probation is entitled to his full salary.

19. Court seeking clarification, the Claimant stated that he is not currently employed. However, he some times does consultations on marketing and sales.

### **The Respondent's submissions**

20. Pursuant to the directions of this Court, the Respondent filed written submissions. I have carefully read and considered the submissions. They do not address the main issue herein. They are heavily on termination and or summary dismissal. They are way off the mark, the Claimant's case is not at all on termination of employment or summary dismissal. That is all one can say of the Respondent's submissions.

### **Determination**

21. It is trite law that where a defendant (read Respondent) files a statement of defence or response but nonetheless fails to present evidence on the pleadings, such a pleading remains a mere statement, without more.

22. The Claimant testified that for the period that he worked with the Respondent, he was not paid any salary thus for a period of 3 (three) months, totaling Kshs. 1,200,000. His evidence was not shaken during cross examination. I am convinced that he was not paid his salary for the period stated and consequently find that he is entitled to the sum of Kshs. 1,200,000 (one million two hundred thousand).

23. Clause 8 of the employment contract stipulated that the Claimant was entitled to an annual leave of 30 days, reason for his as claim that at the time of resignation he had earned an equivalent of 7 (seven) leave days. His claim for a prorated amount of Kshs. 142,857 is not far-fetched. He is accordingly awarded the same.

24. The Claimant has further sought for general damages which he has fixed at Kshs. 1,000,000. I have found it difficult to understand the basis for this claim. There is no evidence placed before Court that can be anchor upon which the Court can make an award of the same. In fact, the Claimant has pleaded and sought for the same as special damages. Special damages must be specifically proved. That was not the case here. The claim is consequently declined.

25. In the upshot, I hereby enter Judgment in favour of the Claimant in the following terms;

**a) A sum of Kshs. 1,200,000 being unpaid salary for the period the Claimant worked for the Respondent.**

**b) Kshs. 142,857, compensation for 7 leave days earned.**

c) Interest on the awarded sum from the date of filing suit till full payment.

d) Costs of the suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 10<sup>TH</sup> DAY OF DECEMBER, 2021**

**OCHARO KEBIRA**

**JUDGE**

Delivered in presence of;

Osiemo for the Claimant.

Cherono for the Respondent.