



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 1472 OF 2017

(Before Hon. Justice Hellen S. Wasilwa 23rd January, 2020)

JAMES KISYANGA MAANGA.....CLAIMANT

VERSUS

NJUGA CONSOLIDATED COMPANY LIMITED....RESPONDENT

JUDGEMENT

1. The Claimant herein filed a Memorandum of Claim dated 28th July 2017, where the Claimant states that he was wrongfully and unfairly terminated from the Respondent's employment. He further contends that the Respondent failed and/or ignored to pay his terminal benefits at the time of his separation.
2. In his Memorandum of Claim the Claimant avers that he was employed by the Respondent herein a limited liability company on 26th September 1989 as a Supervisor earning a monthly salary of Kshs. 13,000/-.
3. He further avers that he performed his duties diligently and to the Respondent's satisfaction until 15th March 2016 when the Respondent retired him and refused to pay his terminal dues due and owing to him at the time of his retirement.
4. In his Memorandum of Claim the Claimant seeks the following reliefs:-
 - i. The sum of Kshs. 541,791/- as particularized in paragraph 5 of the Claim.**
 - ii. Costs of this suit.**
 - iii. Interest in (i) and (ii) above**
 - iv. Any other relief as the Court may deem just.**
5. The Claimant urges the Court to allow his claim as drawn.
6. The Respondent in its Response to the Claimant's Statement of Claim dated and filed in Court on 14th May 2019 admitted having engaged the Claimant.
7. It is further stated that the Claimant was initially employed as a security guard earning a monthly salary of Kshs. 900/- and that he gradually rose through the ranks to the position of Supervisor earning a monthly salary of Kshs. 13,000/-, a position which he held until his voluntary retirement on 15th March 2016.
8. The Respondent however denied refusing to pay the Claimant his terminal dues at the time of his retirement and instead contended that the Claimant declined to accept payment of his dues choosing to make unreasonable and unsustainable demands that culminated in the filing of the instant Claim.
9. The Respondent further denies the tabulation of terminal dues as done by the Claimant and in particular contended that the Claimant applied for and was allowed to proceed on annual leave and therefore the Claim for payment in lieu thereof is unsubstantiated and untrue.

10. The Respondent further contends that the Claimant is not entitled to house allowance as he was housed by the Respondent as from 26th September 1989 to 4th May 2011 due to the nature of his work.

11. The Respondent further contends that subsequently the Claimant's contract did not provide for payment of house allowance and that he is not entitled to the same.

12. In conclusion, the Respondent urged this Honourable Court to dismiss the Claim in its entirety with costs to the Respondent.

13. The matter was thereafter fixed for hearing on 23rd September 2019 and 16th October, 2019 with the Claimant testifying on his own behalf and the respondent calling one witness to testify on its behalf.

Evidence

14. The Claimant, CW1 testified that he was employed by the Respondent herein from 20/9/1989 as a security guard. He further confirmed that his last salary was Kshs. 13,000/-.

15. CW1 further testified that in December 2015 he was summoned to the Respondent's Human Resource Department where he was informed that having attained the age of 50 he was to be retired.

16. CW1 further testified that he did request vide his letter dated 15th March, 2016 giving the Respondent three months' notice prior to his retirement having attained the age of 55 years.

17. He further testified that his request was duly accepted by the Respondent vide its letter dated 16th March, 2016 in which letter the Claimant's retirement was effective 16/3/2016. He further testified that he proceeded to clear with the Respondent as advised in its letter dated 16/3/2016.

18. CW1 further averred that his terminal dues were never paid by the Respondent prompting him to report the matter to the labour office and subsequently filed the instant Claim.

19. On cross-examination, CW1 confirmed that he is seeking to be paid for untaken leave days for 12 years. He further confirmed that he was also not paid any house allowance which he also seeks to be awarded by this Honourable Court.

20. On further cross-examination, CW1 stated that his appointment letter did not make any reference to any payment of house allowance. He however stated that his salary was not consolidated. CW1 also admitted having been allocated one wooden room in the Company where he stayed up to the year 2003.

21. CW1 consequently urged this Honourable Court to allow his Claim as drawn.

Defence Case.

22. The Respondent called one witness **Grace Wambui Kiruri RW1**, an Assistant Legal Officer who requested the Court to adopt her witness statement filed in Court on 14th May 2019 as her evidence in chief. In her statement RW1 reiterated the averments made in the Response to the Claim as her evidence in chief. She further urged this Court to dismiss the Claim with costs.

23. On cross-examination, RW1 confirmed that she was not working with the Respondent at the time of the Claimant's separation. She further confirmed that the Respondent was willing to pay the Claimant for off time.

24. The Respondent urged the Court to dismiss the instant Claim with Costs.

25. The parties thereafter filed and exchanged their written submissions to this Claim.

Submissions by the parties

26. The Claimant submitted that he is entitled to the reliefs as sought in his Memorandum of Claim and relied on the provisions of Sections 28 and 31 (1) of the Employment Act, 2007 and urged this Honourable Court to allow the same as drawn. To buttress this argument the Claimant cited and relied on the findings in the cases of **Pamela Nelima Lutta Vs Mumias Sugar Company Limited (2017) eKLR** and **Ngurua Muita Vs Gyto Success Company Limited (2017) eKLR**.

27. In conclusion, the Claimant urged this Honourable Court to allow his Claim as drawn.

Respondent's Submissions

28. The Respondent on the other hand admitted its indebtedness to the Claimant in the sum of Kshs. 305,525/- as per its letter dated 21st March 2016 attached at page 5 of its list of documents. It is on this basis that the Respondent urged this Honourable Court to enter judgment in favour of the Claimant herein in terms of its admission.

29. The Respondent further submitted that the Claimant's Claim was prematurely filed and that he (the Claimant) has failed to prove his Claim on a balance of probabilities and is therefore not entitled to the costs of this suit and that it would be fair if each party bore its own costs.

30. I have examined the evidence and submissions of the Parties. There is no contention that the Claimant worked for the Respondent and retired honourably having attained his retirement age.

31. The Claimant's contention is that he was not paid his retirement benefits which the Respondent on their part aver was calculated but the Claimant refused to accept claiming other payments.

32. From the Memorandum of Claim, the Claimant seeks payment of leave and house allowance for 12 years.

33. From documents submitted by the Respondent, Appendix 2(c), 2(d), 2(e), 2(g), 2(h), 2(i), 2(j), 2(k), 2(l), 2(m), 2(n), 2(o), 2(p) all the way to 2(v) are leave application forms which show that the Claimant periodically went for leave and his claim for leave for all the 12 years that he worked for the Respondent cannot be tenable.

34. As to house allowance, the Claimant admitted that he was given a small wooden room to stay in. This shows he was housed by the Respondent whatever the nature of the accommodation was. The claim for house allowance fails.

35. The only remedy that the Claimant is therefore entitled to is the amount indicated in the Respondent's Appendix 5 showing tabulation of final dues which the Claimant should go and pick if not already done. The rest of the claim is therefore dismissed with no order as to costs.

Dated and delivered in open Court this 23rd day of January, 2020.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Claimant in person – Present

Wanyama for Respondent – Present