



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT MOMBASA**

**CAUSE NUMBER 552 OF 2017**

**BETWEEN**

**SIMON NZAI MAKAME.....CLAIMANT**

**VERSUS**

**SIFA INVESTMENT CO. LIMITED.....RESPONDENT**

Rika J

Court Assistant: Benjamin Kombe

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Clarks & Company Advocates for the Claimant

Moses Mwakisha & Company, Advocates for the Respondent

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**JUDGMENT**

1. The Claimant filed his Statement of Claim on 7<sup>th</sup> July 2017. He states, he was employed by the Respondent as Legal Assistant, in the Conveyancing Department. He resigned in May 2017. His exit salary was Kshs. 28,237 monthly. He was paid Kshs. 13,547 in terminal dues, an amount he states was outrageous. He prays for Judgment against the Respondent for:-

- a. Certificate of Service.
- b. 1 month salary in lieu of notice at Kshs. 28,237.
- c. Service pay at Kshs. 96,932.
- d. Annual leave pay over a period of 6 years worked at Kshs. 126,000.
- e. Holidays at Kshs. 60,000.
- f. Unpaid salary for May 2017 at Kshs. 28,237.
- g. Overtime worked at Kshs. 86,760.

Total... Kshs. 426,166.

- h. Costs.
- i. Interest.

j. Any other suitable relief.

2. The Respondent filed its Statement of Response on 14<sup>th</sup> November 2017. It is agreed that the Claimant was employed by the Respondent in January 2011. The Claimant resigned. He did not serve out his resignation notice. He received his terminal dues. He is not entitled to the prayers sought.

3. The Claimant and Respondent's Human Resource Officer Nashon Mutuku Timona testified, and closed Parties' respective cases, on 10<sup>th</sup> December 2019.

4. The Claimant adopted in his oral evidence, his Statements of Claim and Witness. He adopted as exhibits 1 to 6, his documents on record. Cross-examined, he stated he did not have specific excess hours worked. He did not recall specific holidays worked. He was on leave on 5<sup>th</sup> June 2017. He received Kshs. 13,547 in terminal dues, under protest. It is his right to receive service pay.

5. Nashon reiterated that the Claimant resigned. His letter of resignation is dated 18<sup>th</sup> April 2017. He gave notice to 5<sup>th</sup> June 2017. He was not an Employee from 6<sup>th</sup> June 2017. The Respondent deducted Kshs. 25,000 from the Claimant's final pay, being advance made to the Claimant by Respondent's Director. He never worked overtime. The Respondent remained closed on public holidays, save for its transport and tracking division, which the Claimant did not work for. There was no outstanding leave at the time of resignation. The Claimant went for leave as shown in his leave application forms. He was subscribed to the N.S.S.F. His Certificate was prepared and ready, but not collected by the Claimant. There were very few questions asked to Nashon in cross-examination. He stated that the Respondent did not have an attendance register at the time of resignation and the Claimant's gross salary was Kshs. 33,000.

**The Court Finds:-**

6. This Claim has no foundation at all.

7. The Claimant resigned and was paid what was due to him.

8. He resigned and cannot turn around and claim notice pay from the Respondent; he was actively subscribed to the N.S.S.F and ineligible for service pay; he is shown to have applied for and gone on annual leave; he did not supply any evidence to show that he was on duty on any public holiday; the final dues paid to him included his salary for work done in May and June 2017; and he did not show when he worked overtime, or indeed how many excess hours he worked, and at what rate. Certificate of Service is ready for collection, with or without an order of the Court.

IT IS ORDERED:-

**a. The Claim is dismissed.**

**b. No order on the costs.**

**Dated and delivered at Mombasa this 26<sup>th</sup> day of March 2020.**

**James Rika**

**Judge**