



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 2212 B OF 2014

JENS REHM.....CLAIMANT

-VERSUS-

ZHONGFA ASIA AFRICA HOTELS COMPANY LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 6th March, 2020)

JUDGMENT

The claimant filed the statement of claim on 18.12.2014 through Mulandi Kasabit & Associates Advocates. The claimant prayed for judgment against the respondent for:

- a) Salary for 23 days worked in April and May USD 168.65 X 87 =Kshs.146, 682.00.
- b) Leave days earned for time worked 55 days x USD 73.33 = USD 4, 033 X87 – Kshs.350, 871.00.
- c) Holidays worked – 19days x USD 73.33 – USD 4,033 X 87= 535,833.00 (less USD 4,839 X87 =Kshs. 420,993.00) =Kshs.733, 590.00.
- d) Kshs.82,203 for the medical expenses incurred by the claimant.
- e) Interest on (a) and (b).
- f) Costs of the suit.
- g) Any other relief that the Honourable Court may deem fit to grant in the interest of justice.

The respondent filed the response to the statement of claim on 09.03.2015 through Githaiga, Mbanya, Waweru and Associates. The respondent prayed that the claimant's suit be dismissed with costs; and any other relief the court deems fit to grant.

The Court has considered the statement of claim and the reply thereto. The following facts are not disputed between the parties:

- a) The respondent employed the claimant by the contract of employment signed on 18.07.2012. The parties rely on the terms of that contract as binding.
- b) The contract was for a period of 2 years from 15.08.2012 and ending on 15.07.2014. The net monthly salary was USD 2200.
- c) The claimant through an email dated 21.04.2014 gave the respondent one month notice of his intention to resign. The notice was effective 21.04.2014 due to private reasons. On 22.04.2014 the respondent replied stating that it had received the notice and it had no option but to accept the resignation. It was pointed out that the claimant's last day at work would be 20.05.2014. The claimant was urged to initiate smooth transition for a smooth handover. The claimant eventually completed the handover process as per the employee exit form on record. The claimant worked for the respondent for one year and 10 months.

The only issue for determination is whether the claimant is entitled to the remedies as prayed for. The Court makes findings as follows:

- a) The claimant prays for salary for 23 days worked in April and May USD 168.65 X 87 =Kshs.146, 682.00. On 29.10.2019 it was

ordered that the documents filed for parties are admitted in evidence. The respondent has filed the letter dated 24.05.2014 setting out the claimant's final dues. The claimant's witness No.2 (CW2) who at the material time was the respondent's Human Resource and Administration Manager testified that the claimant was paid Kshs.400, 000.00 in terminal dues which was only part of the final terminal benefits. If the claimant worked up to lapsing of the notice period then he worked full month in April 2014 and 20 days in May. In paragraph 6 of his witness statement the claimant says he continued to work up to 21.04.2014. In the letter of final dues he was paid full April 2014 salary. Taking that evidence into account the Court returns that the particulars of the 23 days now claimed for pay in April and May 2014 have not been pleaded and strictly proved as required. The prayer will fail as unjustified and not proved at all.

b) The claimant prays for leave days earned for time worked 55 days x USD 73.33 = USD 4, 033 X87 – Kshs.350, 871.00. In the letter of final dues the respondent has already paid USD 3,813 for pending leave days. The computation of the present claim and the relevant particulars have not been pleaded and strictly proved. The basis of the 55 days as claimed and as against the pay in the letter of final dues has not been explained. The prayer will fail as not established and justified.

c) The claimant prays for holidays worked – 19days x USD 73.33 – USD 4,033 X 87= 535,833.00 (less USD 4,839 X87 =Kshs. 420,993.00) =Kshs.733, 590.00. The respondent's letter on final dues shows 14 holidays were paid. The particulars of the 19 days now claimed have not been pleaded and no evidence has been offered in that regard. The prayer will fail.

d) The claimant prays for Kshs.82, 203.00 for the medical expenses incurred by the claimant. The claimant has exhibited the hospital records showing that he was treated and he paid the money as prayed for. CW2 confirmed that the claimant was entitled to medical cover at the material time he incurred the medical bill but such cover had not been provided. Clause 3 of the contract of service provided for current company scheme for senior staff for in-patient treatment through APA Insurance Ltd. The claimant has provided no evidence that he received the in-patient services. As submitted for the respondent some of the receipts date back to 2011 prior to the claimant's employment. The prayer will therefore fail.

The Court has revisited the pleadings, the evidence and the submissions filed for the parties and returns that as submitted for the respondent the claimant has failed to provide the necessary evidence to establish the claims and to justify the prayers.

The claimant has not succeeded in his suit and will pay the respondent's costs of the suit.

In conclusion judgment is hereby entered for the claimant for the dismissal of the claimant's suit with costs.

Signed, dated and delivered in court at **Nairobi** this **Friday, 6th March, 2020**.

BYRAM ONGAYA

JUDGE