



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 350 OF 2015

(Before Hon. Justice Mathews N. Nduma)

WILIAM OUMA OSUR.....CLAIMANT

VERSUS

SALMAN IRANI.....RESPONDENT

JUDGMENT

1. The suit was filed on 23rd September 2015 by the claimant praying for payment of terminal benefits in the sum of Kshs. 465,147.40.
2. The claimant testified that he was employed by the respondent as a house keeper/gardener in the year 1983 at a monthly salary of Kshs. 360. That the claimant worked continuously until the year 2015 when he left employment due to sickness. That at the time, the claimant earned Kshs. 6,000 per month
3. The claimant produced the list of documents produced as exhibits '1' to '8' which include a letter of demand by Ouma, Anyumba and Company Advocates dated 8th June 2015 to the respondent.
4. The claimant testified under oath that he was employed by the father of the respondent Mr. Alzar Irali who died in the year 2012. That he however continued to work for the respondent until the year 2015.
5. That he was not paid terminal benefits when he left employment.
6. The claimants reported the dispute to the Ministry of Labour and the office computed the terminal benefits due and owing to the claimant in the sum of Kshs. 465,147.50 including service pay for 31 years, payment in lieu of leave days not taken, underpayments for the years of service and unpaid rest days and public holidays. The claimant did not produce before court details of the computation of the claimed amount but demanded a global sum claimed on his behalf by the Ministry of Labour found in exhibits 3, 4 and 8 which are demand letters by the Ministry to the respondent for the specified amount.
7. The respondent filed a defence to the statement of claim on 18th September 2018 but the respondent did not defend the suit at the hearing on 8th October 2019 despite the fact that the hearing date was obtained by the advocate on record for the respondent on 25th February 2019 and the court finds that the claimant has proved on a balance of probabilities that he is owed terminal benefits in the sum of Kshs. 465,147.40 by the respondent.
8. Accordingly, judgment is entered in favour of the claimant against the respondent in the sum of Kshs. 465,147.40.
9. The amount is payable with interest at court rates from date of filing suit till payment in full.
10. The respondent to pay costs of the suit.

Judgment Dated, Signed and delivered at Nairobi this 16th day of April, 2020

Mathews N. Nduma

Judge

ORDER

In view of the declaration of measures restricting court of operations due 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

Claimant in person

Chrispo – Court Clerk