



**REPUBLIC OF KENYA**

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

**AT NAIROBI**

**CAUSE NO. 2418 OF 2016**

**GEORGE OINDO ACHIENG.....CLAIMANT**

**-VERSUS-**

**AGRI QUEST LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Thursday 9<sup>th</sup> April, 2020)

**JUDGMENT**

The claimant filed the memorandum of claim on 24.11.2016 through Oduor Henry John Advocates. The claimant prayed for judgment against the respondent for:

- a. A declaration that the respondent's actions forced the claimant to resign.
- b. A sum of Kshs.591,408.00 being salary arrears Kshs.226,408.00; exemplary damages Kshs.300,00.00; and one year severance pay Kshs.65,000.00.
- c. Certificate of service.
- d. Cost of the suit.
- e. Interest on b, c, and d above at present court rates.
- f. Any other relief the Honourable Court may deem just and expedient to grant.

The claimant's case is that the respondent employed him on 01.06.2016 as Technical Services Manager and Head of Laboratory Services at Kshs.65, 000.00 per month. Further, the respondent seriously frustrated the claimant by failing to pay full salary and sometimes paid no salary at all. Thus the claimant was forced to resign from employment at the end of October 2016. As at resignation the claimant claimed that the salary owed was Kshs.226, 600.00.

The respondent entered appearance on 20.03.2017 through Kabue Thumi & Company Advocates. The respondent did not file a defence and despite service did not attend at the hearing. The claimant testified to support his case and his advocate submitted that the case be determined on the basis of the pleadings and evidence on record.

The evidence is that the respondent employed the claimant by the letter dated 01.10.2015 to the position of Head Environment Analysis. The employment was effective 01.10.2015 at 65,000.00 per month. The Court returns that the letter of appointment is at variance with the claimant's pleadings that he was employed on 01.06.2016 as Technical Services Manager and Head of Laboratory Services at Kshs.65, 000.00 per month. Further the Court returns that the claimant has failed to plead the particulars of the salary arrears and to strictly prove the same. The months and amounts for alleged partial payment of salary and for the alleged no payment of salary have not been pleaded and no evidence was provided in that regard. The claimant provided no computation or breakdown on how the amount claimed and prayed for was arrived at. The Court finds that on a balance of probability the claimant has failed to establish the alleged contract of service and has as well failed to particularise the claim and to prove it. In the circumstances, the statement of claim is liable to dismissal with no orders on costs.

In conclusion, judgment is hereby entered for the respondent against the claimant for the dismissal of the statement of claim with no orders on costs.

**Signed, dated and delivered** in court at **Nairobi** this **Thursday, 9<sup>th</sup> April, 2020.**

**BYRAM ONGAYA**

**JUDGE**