



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 904 OF 2015

ANTHONY ALI MWANYALO.....CLAIMANT

VERSUS

KENYA WILDLIFE TRAILS LIMITED.....RESPONDENT

JUDGEMENT

1. The Claimant brought this suit on 15.5.2017 seeking the following reliefs:

- a. Kshs. 436,660 being accrued terminal benefits.
- b. Certificate of service
- c. Costs

2. The Respondent did not file any defence and as such the matter proceeded unopposed.

3. The undisputed facts of the case are that the claimant was employed by the respondent in July 2006 and the terms of service were set out in the Respondent's General Employment Agreement. His salary was Kshs. 20,000.00 per month.

4. He worked diligently but in March 2015 the Respondent stopped paying his salary until 1.4.2016 when he was forced to tender his resignation/retirement due to the persistent withholding of salary.

5. He contended that the withholding of the salary by the Respondent was unlawful and it exposed him to undue hardship and prejudice. He contended further that from March 2015 to March 2016, the Respondent failed to remit NSSF and NHIF deductions and prayed for refund of the same. He also contended that his NSSF deductions for August 2007 and August 2008 were not remitted to the Agency and prayed for refund. Finally, he contended that his SACCO deductions were not remitted to the tune of Kshs. 69,000.00 and prayed for refund.

6. In view of the foregoing matters, the claimant prayed for judgment against the respondent for payment of the withheld money plus severance pay for the 9 years worked.

7. The issue for determination is whether the claimant has proved his claim to the required standard.

8. I have carefully considered the pleadings and evidence tendered by the claimant under oath. The letter by the respondent dated 8.2.2017 confirms that the claimant was her employee until 1.4.2016 when he stopped reporting for duty and she considered he had left his employment. The NHIF and NSSF statements produced further confirms that the claimant was employed by the respondent from 2006. I am therefore satisfied that the claimant was indeed employed by the Respondent from July 2006 until 31.3.2016.

9. The Claimant alleged that from March 2015 to March, 2016, he was not paid his salary despite rendering his services. The Respondent confirmed by the letter dated 8.2.2017 that the claimant stopped attending work from 1.4.2016. In the circumstances the burden of proof shifts to the Respondent to prove that she paid the claimant all his salary from the period running from March 2015 to March 2016. However, she did not tender any evidence and as such the claimant has not been disproved. Consequently I award the claimant the claim for salary for the period between March 2015 and March 2016 equalling to 13 months. Hence $Kshs. 20,000 \times 13 = Kshs. 260,000$.

10. The claim for unremitted NSSF and NHIF deductions must fail because the claimant has not proved that the alleged deductions were made from his salary. In view of the finding above that his salary was not paid from March 2015 to March 2016, it follows that nothing was

deducted from his salary. However, the claim for NSSF deductions for August 2007 and August 2008 is granted at the rate of Kshs. 200 per month equaling Kshs. 400.

11. The claim for withheld SACCO deductions lacks particulars and evidence. I have however seen a statement of his shares with Wildlife Trail SACCO for the period between 30.4.2011 and 31.5.2013 showing a net of Kshs. 69,000 as his balance of shares. If that is what is being claimed herein then I am afraid that this court lacks jurisdiction to deal with claims between SACCO's and their members. It has also not been clarified that the respondent herein is the SACCO.

12. Finally, the claimant has prayed for severance pay for his 9 years of service to the Respondent. The claim is founded on Article 10 of the General Employment Agreement dated 4.10.2006. The Article provides that the Respondent will pay gratuity by way of severance pay as per the Kenyan Law upon termination. The claimant calculated his severance claim at the rate of one half of his monthly salary and I grant the same. Although the respondent paid NSSF for the claimant, the same was not paid for 15 months as indicated herein above between August 2007 and 31st March, 2016. Hence $Kshs. 20,000 \times \frac{1}{2} \times 9 = Kshs. 90,000$.

13. The claim for Certificate of Service is granted as prayed since it is a right under section 51 of the Employment Act. Although the Respondent issued the letter dated 8.2.2017 to whom it may concern, that letter does not fit within meaning of a Certificate of Service as envisaged under section 51 of the Act.

14. In conclusion I enter judgment for the claimant against the Respondent as following:-

a. Unpaid salaryKshs. 260,000.00

b. Unremitted NSSFKshs. 400.00

c. Severance payKshs. 90,000.00

TOTAL Kshs. 350,400.00

d. The award is subject to statutory deductions but in addition to interest at court rates from the date of filing suit.

e. The claimant to be issued with a Certificate of Service forthwith.

f. The claimant will have costs and interest.

Dated, signed, and delivered in Nairobi this 16th day of July, 2020.

ONESMUS N. MAKAU

JUDGE