



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CAUSE NO. 402 OF 2017**

*(Before Hon. Justice Mathews N. Nduma)*

**SOPHIA KEMUMA OMBUI.....CLAIMANT**

**VERSUS**

**NETCO MANAGEMENT LIMITED.....RESPONDENT**

**JUDGMENT**

1. The Claimant filed suit on 11<sup>th</sup> October 2017 praying for the following reliefs:-

- i. One month notice pay Kshs. 18,901.
- ii. 15 days leave balance Kshs. 10,904.
- iii. Overtime for 5,984 hours in the sum of Kshs. 754,024.
- iv. Severance pay in the sum of Kshs. 76,331.
- v. Maximum Compensation Kshs. 226,812.
- vi. Costs and interest.
- vii. Share refund as Netco Employee Kshs. 47,883 and
- viii. Certificate of service.

2. Summons to enter appearance and the memorandum of claim were served on the respondent on 3<sup>rd</sup> April 2017 and an affidavit of service was filed by Mr. John Ochieng Ouma a licensed process server on 24/1/2017.

3. The respondent did not enter appearance nor file a statement of defence. The respondent was served numerous with invitation to attend court to fix hearing date and return of service filed but the respondent made no appearance in court at all.

4. Formal proof of the matter proceeded on 11/7/2019 and CW1, the claimant testified under oath in support of the claim. The claimant relied on a witness statement dated 12/10/2017 and adopted it as her evidence in chief.

5. CW1 relied on the particulars in the statement of claim and exhibits 'A' to 'N' annexed thereto to prove her case.

6. The claimant relied on the prayers set out in the statement of claim which remain uncontroverted and therefore proved on a balance of probabilities.

7. The court having considered the statement of claim, the annexures' thereto, the written witness statement and oral testimony by the claimant enters Judgment as follows: -

- a. The claim for Kshs. 18,901 in lieu of one month notice is misconceived the claimant having resigned from work and is dismissed.

b. Kshs. 10,904 being 14 days unpaid leave days not taken is granted.

c. Overtime backdated for 3 years only from 7/3/2016, the date of termination is granted. The rest of the claim is time barred and is dismissed. Claimant to compute and file the awarded items within 14 days of Judgment for confirmation by the court.

d. The claim for severance pay is dismissed the claimant having resigned from employment as seen in the statement of claim and evidence before court.

e. The Claimant tendered letter of resignation of employment dated 29/2/2016 and stopped working on 7/6/2016. The claimant's employment was not terminated by the respondent. The claim for compensation for unlawful termination of employment lack merit and is dismissed.

f. The respondent to facilitate refund of claimant, s share fund in the sum of Kshs. 47,833.

g. The respondent to give the claimant a certificate of service within 14 days of this Judgment.

h. The court awards interest at court rates from date of Judgment till payment in full.

i. Costs to follow the event.

**Dated, Signed and Delivered at Nairobi this 17th Day of September 2020**

**Mathews N. Nduma**

**Judge**

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020, this ruling 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**

**Appearance:**

Mr. Olala for Claimant

Chrispo: Court Clerk