

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CAUSE NO. 220 OF 2018

NELSON THEURI KIMOTHO.....CLAIMANT

VERSUS

ANCHOR GROUP OF COMPANIES.....RESPONDENT

JUDGMENT

1. The Claimant was an employee of the Respondent and he has sued the Respondent for non-payment of agreed arrears terminal dues and unremitted NSSF dues. He asserts that he was employed vide a contract which commenced on 1st February 2015 and that he worked at the Respondent's establishment Giraffe Ark Lodge based at Nyeri. He asserts that he was earning Kshs. 27,073/- plus house allowance. He avers that he gave one month's notice of his intention to resign in December 2017 and ceased being the Respondent's employee in January 2018. He averred that upon termination of the contract, it was agreed in writing that the Respondent would pay Kshs. 114,414.40. He further claims Kshs. 9,600/- which is unremitted NSSF deductions. He also prayed for a certificate of service as well as costs of the suit plus interest at court rates.

2. The matter proceeded as an undefended cause though the Respondent had filed a motion seeking to be permitted to file a defence out of time. The application was never argued. The Claimant testified that he was resident in Nanyuki and that upon resignation was to be paid his dues but the Respondent did not pay his terminal benefits or the NSSF dues amounting to Kshs. 9,600/-. He opted not to file submissions.

3. The claim is pretty straight forward. In the draft defence, the Respondent averred that the Claimant had no legal entitlement to the monies he was claiming in his statement of claim. The Respondent urged the dismissal of the claim and attached to the draft defence the resignation letter, the contract and the clearance form for the Claimant. In his claim, the Claimant attached the final dues calculation which clearly showed the amount he was entitled to. The Claimant resigned from the Respondent for its persistent failure to pay salaries on time. He stated in his letter that he was paid at times 3-4 months late and thus was unable to continue with the employment. He did not however prove the NSSF dues were not remitted as no statement was availed to show the non-remittance. He is not entitled to that aspect of the claim. As matters stand he is only entitled to the terminal dues which are Kshs. 114,414.40. He will also have costs of the suit and interest at court rates on the terminal dues from the date of filing suit till payment in full.

- a. Terminal dues Kshs. 114,414.40
- b. Interest on a) above at court rates from the date of filing suit till payment in full.
- c. Certificate of service
- d. Costs of the suit.

It is so ordered.

Dated and delivered at Nyeri this 25th day of March 2019

Nzioki wa Makau

JUDGE

I certify that this is a true copy of the Original

Deputy Registrar