



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 2364 OF 2016

DUNCAN MULL.....CLAIMANT

-VERSUS

SUNTREK TOURS & TRAVEL LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 22nd March, 2019)

JUDGMENT

The claimant filed the memorandum of claim on 23.11.2016 through Robert Muthama & Associates. He prayed for judgment against the respondent for:

- a) Issuance of a certificate of service under section 51 of the Employment Act, 2007.
- b) Unpaid house allowance for at 15% of salary for 27 years at Kshs.2, 250.00 x 12 x 27 = Kshs.729, 000.00.
- c) Service gratuity at 15 days per year worked 27 x 7,500= Kshs.202, 500.00.
- d) Salary arrears for 9 months Kshs.135, 000.00.
- e) Unpaid leave days for 18 years Kshs.270, 000.00
- f) Total Kshs. 1, 336, 500.00.
- g) Interest at Court rates.
- h) Costs of the suit.

Despite service the respondent failed to enter appearance or to file defence or to attend the hearing. The claimant testified to support his case.

The claimant testified that the respondent employed him as a tour driver on 01.06.1991. He worked until 01.11.2016 when he resigned because of the consistent fundamental breach of the contract by the respondent who failed to pay the monthly agreed salaries for 9 months. At time of resignation he testified that he earned Kshs. 15,000.00 per month but the exhibited pay slip showed a gross of Kshs.12, 459. The only issue for determination is whether the claimant is entitled to the remedies as prayed for. The Court has considered the material on record and returns as follows:

- 1) The claimant prayed for house allowance. He testified that from 1998 to 2016 he was not paid house allowance. However his payslip on record showed he was paid a gross pay. His evidence was that prior to 1998 he was paid house allowance. He did not exhibit pay slip to show that position. The Court returns that on a balance of probability, the claim and prayer will fail as parties appear to have agreed on a consolidated pay inclusive of house allowance.
- 2) The claimant prays for service gratuity at 15 days per completed year of service. He testified that 42 months NSSF was deducted and not remitted. The payslip on record shows a gross pay of Kshs.12, 459. To balance justice within provisions of section 35 of the Act, for the 42 months making 4.5 years he is awarded half month salaries for each year served and NSSF not remitted thus 4.5 x 6, 229.50 giving him **Kshs.28, 032.75**.

- 3) The claimant testified he worked and was not paid for 9 months and is awarded 12, 459.00 x 9 making **Kshs.112, 131.00**.
- 4) The court returns that the claimant is entitled to certificate of service as prayed for.
- 5) The claimant testified that he was not given annual leave for 18 years and is awarded a month salary in lieu of the annual leaves at Kshs.12, 459.00 x 18 making **Kshs.224, 262.00**.
- 6) The costs follow event and the respondent will pay the claimant's costs of the suit.

In conclusion judgment is hereby entered for the claimant against the respondent for:

- 1) The respondent to pay the claimant a sum of **Kshs.364, 425.75** by 01.05.2019 failing the respondent to pay interest thereon at Court rates from the date of the date of filing the suit till full payment.
- 2) The respondent to deliver the certificate of service by 01.05.2019.
- 3) The respondent to pay the claimant's costs of the suit.

Signed, dated and delivered in court at Nairobi this Friday 22nd March, 2019.

BYRAM ONGAYA

JUDGE