



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CASE NO. 220 OF 2016

(Before Hon. Justice Mathews N. Nduma)

ANDREW OLUOCH RIAKO.....CLAIMANT

VERSUS

COUNTY GOVERNMENT OF HOMA-BAY.....1ST RESPONDENT

COUNTY GOVERNMENT OF MIGORI.....2ND RESPONDENT

THE HON. ATTORNEY GENERAL.....3RD RESPONDENT

JUDGMENT

1. The claimant states that he was employed by Homa-bay County as an askari from 1986 to date. That in July 2010 he was transferred to Migori in job group S 13. That while at Migori he was not paid salary for 32 months in the sum of Kshs 580,960. That he was not granted leave during the period and was not paid in lieu in the sum of Kshs 27,686.
2. That he travelled to Migori from Homa-bay daily and used Kshs 500 per day for 28 months in the sum of Kshs 320,000. The claimant also claims salary arrears in the sum of Kshs. 46,000.
3. That the total claim is for Kshs. 1,007,686.
4. The claimant also seeks damages for constructive dismissal while at Migori for the 32 months equivalent to 12 months salary. The claimant relies on the statement of claim and annexures thereto. He claims costs and interest.
5. The 3rd respondent filed memorandum of appearance on 14th October 2016 but did not file any statement of defence. The 1st and 2nd respondents did not file any statement of defence.
6. The claimant blames the Ministry of Local government for the problems that faced him in that the letter of cross transfer dated 25th March 2010 which transferred the claimant from Municipal Council of Homa-bay to Municipal council of Migori was written by one Isaack K. Kirui, Provincial Local Government Officer.
7. The claimant testified that he earned Kshs. 18,155 per month at the time he was transferred to Migori.

Determination

8. The suit is undefended. The claimant has proved on a balance of probabilities that he was not paid salary at the rate of Kshs. 18,155 per month for 32 months upon being transferred from Homa-bay to Migori Municipal Council.
9. The claimant was not paid leave allowance for the years 2010, 2011 and 2012 in the sum of Kshs. 27,686 and has established that too on a balance of probabilities.
10. The claimant was also not paid salary increment in the sum of Kshs 46,000 that accrued during the period he was at Migori.
11. The claimant has not established contractual basis for the claim in respect of travel costs in the sum of Kshs 320,000. No receipts have been provided to prove these special damages payable by way of reimbursement either.

12. Accordingly, the claim for travelling costs is dismissed for lack of merit.

13. Similarly, the claim for constructive dismissal has not been proved on a balance of probabilities. The claimant worked during the 32 months period at Migori and has sought payment of salary for the period in arrears.

14. The claimant told the court that he still works for Homa-bay County to date. The claim for constructive dismissal is not well founded and is dismissed.

15. In the final analysis judgment is entered in favour of the claimant against the 2nd respondent as follows:-

(a) Kshs. 580,960, unpaid salary for 32 months.

(b) Kshs. 27,686, in lieu of three years untaken leave.

(c) Kshs. 46,000 arrear salary.

Total award – Kshs. 654,646.

(d) Interest at court rates from date of filing suit till payment in full.

(e) Costs of the suit.

Judgment Dated, Signed and delivered this 21st day of March, 2019

Mathews N. Nduma

Judge

Appearances

G.S. Okoth for the claimant

Chrispo – Court Clerk