

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 1821 OF 2013

MORRIS KINYANJUI KAMAU.....CLAIMANT

VERSUS

TOTAL KENYA LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant herein sued his erstwhile employer for the alleged failure and/or refusal to pay terminal dues. The Claimant averred that he was employed by the Respondent as a mechanical engineer and resigned from his employ on 28th March 2013. Upon the resignation the Respondent was to pay the Claimant his terminal dues. The Claimant thus sought the said dues amounting to Kshs. 229,169.60, the certificate of service, interest on the sums claimed and costs of the suit. He attached an expense sheet prepared by the Respondent which showed the calculation he was entitled to.

2. The Respondent filed an unsigned defence in which it averred that the Claimant was cited for insubordination and that the Claimant resigned on 27th February 2013 after he was served with a letter to show cause dated 18th February 2013 in relation to claims of undue delay in processing contractor's payments. It asserted that the resignation was before the conclusion of the disciplinary proceedings. The Respondent asserts that the Claimant was paid all his dues and without prejudice to the foregoing, if there was non-payment it was on account of the failure to submit the claims within 2 months after the official travel. The Respondent sought the dismissal of the claim with costs.

3. The Claimant testified and the Respondent relied on the defence filed herein. The Claimant was firm that his unpaid dues were his entitlement as terminal dues. There were no submissions filed and therefore the court was to determine the matter on the evidence of parties and the oral testimony of the Claimant. The Claimant asserts he was not paid. The Respondent has availed a sheet in which it is clear a sum of Kshs. 202,147.65 was transferred through Citicorp to the Claimant. The Claimant on the other hand has a payment calculation by the Respondent which shows the sum due to the Claimant after deductions to be Kshs. 307,048.80. It clearly is indicated as the sum due. Upon payment of the sum of Kshs. 202,147.65, the Respondent had a balance of Kshs. 104,901.15 to pay and not the sum the Claimant sought in his claim. He therefore was merited in seeking redress for the recovery of the sum owed to him. In my view, after tendering his resignation he was entitled to payment for his services and the Respondent is thus liable to pay the Claimant Kshs. 104,901.15. He is also entitled to costs as the Respondent ought to have settled the sum due when it was demanded as the calculation of the sums was from its records. I enter judgment for the Claimant against the Respondent for:-

- a. Kshs. 104,901.15 as the balance of terminal dues
- b. Certificate of service in terms of Section 51 of the Act
- c. Costs of the suit
- d. Interest on the sum in a) above at court rates from date of filing suit till payment in full.

It is so ordered.

Dated and delivered at Nairobi this 5th day of April 2019

Nzioki wa Makau

JUDGE