



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NO. 1465 OF 2013

(Before Hon. Lady Justice Maureen Onyango)

MUATHA MATHUVA.....CLAIMANT

VERSUS

HOME GROWN KENYA LIMITED....RESPONDENT

JUDGMENT

The claimant was employed by the respondent as a Crane Operator at its IBIS FARM in Mt. Kenya Region. He tendered his resignation from employment letter on 1st April 2011. The letter states that he had decided to leave employment at the end of April, thus giving one month's notice.

The resignation was accepted by letter of the same day in which he was informed that he would be paid salary and house allowance up to 30th April 2011, any leave due and One Way Travelling Allowance less any liability to the company.

The claimant's terminal dues were subsequently tabulated as follows—

Kshs.

Basic Pay	34,406.00
House Allowance	5,162.00
Leave days paid	11,311.16
Service Gratuity	8,483.37
Leave Travel Allowance	<u>1,000.00</u>
Total	Kshs.60,362.98

The deductions are set out as follows –

P.A.Y.E	8,919.00
N.S.S.F	200.00
N.H.I.F	320.00
Co-op Loan Mo 1	20,000.00
Loan Interest	200.00

Recovery/Loans	50.00
CO-OP Shares (Total 48,000.00)	1.000.00
Co-op Loan No 2 (Balance 6,110.00)	5,000.00
Loan Interest	111.00
Co-op Loan No 3 (Balance 18,232.00)	6,768.00
Loan Interest	375.00
FLO Deduction	15,700.00
Pension	<u>1,720.00</u>
TOTAL DEDUCTIONS	60,363.00

The claimant signed a disclaimer on 2nd May 2011 in the same document in which the tabulation was done.

The claimant was also issued with a certificate of service which states that he was employed by the respondent at Homegrown (K) Limited – Mt. Kenya Region, Ibis Farm from 2nd May 2007 to 30th April 2011. That he started as a Crane Operator and left in the same position. The certificate of service is dated 30th April 2011.

By his memorandum of claim dated 5th September 2013 and filed on 9th September 2013 the claimant alleges that he was employed as a Crane Operator but was given additional responsibility as a motor Grader in addition to his work as a Crane Operator without corresponding salary increment. That his request for salary increment for the additional work was turned down. That as a result he got frustrated and resigned. He prays for the following reliefs –

(a) A declaration that the respondent’s refusal to pay the claimant his terminal dues is unlawful, unfair and inhumane and that the claimant be paid the same.

(b) An order for the respondent to pay the claimant his terminal dues totalling to Kshs.237,398.70/=

(i). Salary for 1st – 30th April 2012..... Kshs.39,566.45

(ii). Payment in lieu on untaken and unpaid leave

for the entire duration of service being

Kshs.39,566.45 x 5 years..... Kshs.197,832.25

Total Claim Kshs.237,398.70

(c) An order for the respondent to pay the claimant’s costs of this claim plus interest hereon.

The respondent filed a response to the Memorandum of claim in which it denies that the claimant was given additional responsibility. It avers that the claimant was employed as a Crane Operator and resigned in the same position, that at no point was he given responsibility of motor grader. The respondent further denies that the claimant was frustrated at work. It avers that the claimant did not give any reason for his resignation.

The respondent avers that the claimant signed a discharge acknowledging that he had no claims against the respondent. That the discharge clearly showed the details of the amounts the claimant owed the respondent which had to be recovered from the terminal dues, as is the standard procedure everywhere. It further states that as reflected in the discharge the claimant actually owes the respondent after taking into account the amounts due to the respondent and the amount recovered from the claimant’s terminal dues.

The respondent prays that the claim be dismissed with costs.

The claimant did not file a reply to the response filed by the respondent.

In view that the main facts of this suit are not contested, the parties were directed to proceed by way of pleadings, documents and written submissions.

Submissions

In the written submissions filed on behalf of the claimant it is submitted that the claimant did not take leave and was not paid one month's salary in lieu thereof. It is submitted that the claimant has proved that he resigned due to frustration, that he was not paid salary for April 2011 after the notice period expired.

The claimant relies on the case of *Andrew Obonyo and Another –V- Cornerstone Securities Services Limited (2015) eKLR* where Nzioki Wa Makau J. entered judgment in favour of the claimants for claims similar to the claim herein.

No submissions were filed on behalf of the respondent even after time was enlarged for that purpose.

Determination

The issues arising for determination are whether the claimant has proved that he resigned due to frustration and if he is entitled to the prayers sought.

The letter of resignation by the claimant is reproduced below –

“Muatha Mathuva

3205

1/4/2011

RE: RESIGNATION FROM HOMEGROWN (K) LIMITED

To Human Resources Manager.

I Muatha have decided to leave the company at the end of April which is one month's notice.

That you for the cooperation since I join this company.

Mathuva”

The letter does not give reason for the resignation. The claimant in fact thanked the respondent for cooperation since he joined the company. There is no evidence of frustration either pleaded in the Memorandum of Claim or stated in the letter of resignation.

On the claimant's prayers, the tabulation of his benefits shows he was paid salary and house allowance for April 2011, gratuity, leave days not taken and leave travelling allowance. The claimant is not entitled to notice as he resigned. The respondent has attached all leave forms from 2007 to 2011, which reflect that the claimant took leave throughout the period he was in employment. The claimant did not deny that he owed the monies that the terminal dues were used to defray.

For the foregoing reasons I find no merit in the claim with the result that the same is dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 14TH DAY OF JUNE 2019

MAUREEN ONYANGO

JUDGE