



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 728 OF 2016

JEFF MUTINDA KILIKU.....CLAIMANT

-VERSUS-

HASBAH KENYA LIMITED..... RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 1st November, 2019)

JUDGMENT

The claimant filed a memorandum of claim on 03.05.2016 through Namada & Company Advocates. The reply to claim was filed on 31.05.2018 through Ali & Company Advocates.

By consent of the parties partial judgment was entered on 18.07.2019 for the claimant against the respondent with orders for:

- a) Notice pay for Kshs.16, 588.00.
- b) Damages for 6 months being Kshs. 99, 528.00.
- c) Parties to file submissions on remaining issues of service pay and house allowance for Court to determine.
- d) Parties agree that the claimant commenced working for the respondent on 20.09.2010 as a casual labourer where-after he was issued with a contract of employment from 08.07.2013 when he was engaged on permanent terms.
- e) Issue of costs be determined by Court.

The parties filed their respective submissions. The Court has considered the submissions and the material on record and makes findings as follows:

- 1) It is submitted for the respondent that service pay is due from 08.07.2013 when a permanent contract was offered and not 20.09.2010 when casual employment commenced. For the claimant it is submitted that the claimant worked for 2 years 9 months from 20.09.2010 to June 2013 when he was registered with NSSF. The Court finds that service pay is rewarded to the employee for service rendered and the claimant served without break for the alleged period of casual service. Under section 35 of the Employment Act, 2007 he is entitled to service pay for each completed year of service because there has been no established alternative pension or separation pay for the period in issue. The Court awards him one month for each completed year of service making Kshs. 16, 588 x 2 = **Kshs.33,176.00**. While making the award the Court returns that the service pay became due on the date of separation and it was therefore not time barred. It was a continuing injury commencing from the date of separation.
- 2) The claimant prays for house allowance for 2 years 10 months at 15 % of Kshs.16, 588.00 per month making Kshs. 84, 598.80. The claimant's case is that it is in July 2013 that he was given a permanent contract with a consolidated pay but prior to that he was paid wages without house rent element. Thus the respondent should be ordered to pay a sum reasonable for the claimant's housing accommodation as per section 31(1) of the Act. The respondent submits that prior to July 2013 the claimant was a casual employee and house allowance was not due. The Court finds that the claimant has not justified the application of 15% of basic pay under the permanent contract to justify unpaid house allowance prior to the permanent contract. The Court considers that the house allowance prior to July 2013, if due, was in the nature of special damages that needed to be specifically pleaded then proved. That was not done. Further the failure to pay the house allowance as alleged was a continuing injury which ceased in July 2013 whereas the suit was filed on 03.05.2016 so that the Court finds that the cause of action was time barred under the 12 months of limitation under section 90 of the Act. The prayer will fail.
- 3) As the claimant has substantially succeeded in the suit, the respondent will pay the costs.

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

a) Payment of **Kshs.33, 176.00** being service pay.

b) Payment of costs of the suit.

Signed, dated and delivered in court at **Nairobi** this **Friday, 1st November, 2019**.

BYRAM ONGAYA

JUDGE