



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1060 OF 2015

BONIFACE MAKAU MWATU.....CLAIMANT

v

PREMIER BAG & CORDAGE LIMITED.....RESPONDENT

JUDGMENT

1. On 26 June 2015, Boniface Makau Mwatu (Claimant) instituted legal proceedings against Premier Bag & Cordage Ltd (Respondent) alleging breach of contract in that the Respondent had failed or declined to pay him retirement benefits amounting to Kshs 840,150/-.
2. The firm of Wilbur Antony & Co. Advocates entered Appearance for the Respondent on 18 April 2016 but never filed a *Response*.
3. On 2 April 2019, Wasilwa J certified that the Cause proceeds as an undefended Cause
4. When the Cause came up for formal proof on 30 October 2019, the Claimant's advocate informed the Court that he had served a hearing notice directly upon the Respondent because the advocate who had entered Appearance had never served a copy of the *Memorandum of Appearance*.
5. The Claimant testified but did not file submissions by 15 November 2019 as directed.

Employment relationship

6. The Claimant filed copies of payslips indicating that he was employed by the Respondent and therefore the question of an employment relationship is not in doubt.

Service pay/severance pay

7. The copies of payslips show that the Claimant was contributing to the *National Social Security Fund*, and therefore by virtue of section 35(5) & (6) of the Employment Act, 2007, he would not be entitled to the statutory *service pay*.
8. *Severance pay*, which is what the Claimant pleaded, is a statutory entitlement in cases of redundancy.
9. The Claimant separated with the Respondent on account retirement and not redundancy and would not be eligible for statutory *severance pay*.
10. If the Claimant was seeking severance pay pursuant to contractual agreement, or consequent upon any other legal provision, the same was not disclosed or proved.
11. This head of relief is declined.

Refund of salary deductions

12. The Claimant also sought Kshs 13,606/- allegedly unlawfully deducted for absenteeism.
13. This head of the claim was in the nature of special damages but was not proved to the required standard.

Conclusion and Orders

14. Arising from the foregoing, the Court finds no merit in the Cause and orders it dismissed with no order as to costs.

Delivered, dated and signed in Nairobi on this 6th day of December 2019.

Radido Stephen

Judge

Appearances

For Claimant Mr. Ndungu instructed by J.G. Wathigo & Co. Advocates

Respondent did not participate

Court Assistant Lindsey