



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

DOUGLAS MUEMA NZIOKA.....CLAIMANT

VERSUS

ELECTRONICS TECHNOLOGY LIMITED.....1ST RESPONDENT

STEPHEN NJIHIA MBUGUA.....2ND RESPONDENT

JACINTA WANGUI NJIHIA.....3RD RESPONDENT

JUDGMENT

Introduction

1. The Claimant’s claim brought by a Memorandum of Claim dated 18th July 2016 and filed in court on 29th July 2016 is for payment of terminal dues.

2. The Respondents did not file any reply in spite of due service. I therefore heard the Claimant *ex parte*.

The Claimant’s Case

3. The Claimant states that he was employed by the 1st Respondent as an Accounts Assistant on 17th January 2001 at a monthly salary of Kshs. 18,000 plus a commission of 2% on monthly sales. He adds that he was declared redundant on 30th January 2016.

4. The Claimant further states that from May 2010, the Respondents did not pay him his monthly commissions. He avers that he was denied annual leave which had accumulated to 293 days as at the time he left employment. Additionally, he was not paid his redundancy dues.

5. The Claimant has tabulated his claim as follows:

a)1	month’s	salary	in	lieu	of	notice.....Kshs.	18,000
b)Severance	pay	for	15	years.....		135,000	
c)Accrued	leave	for	293	days.....		251,000	
d)Unpaid		commission.....				1,758,149	
e)12 months’	salary	in compensation.....				216,000	

Findings and Determination

6. There are two (2) issues for determination in this case:

- a) Whether the Claimant has made out a case for unlawful termination of employment;
- b) Whether the Claimant is entitled to the remedies sought.

Unlawful termination?

7. The Claimant's claim is based on his assertion that he was declared redundant but was not paid his terminal dues. The Claimant did not however present any evidence on declaration of redundancy. All he told the Court is that on 30th January 2016, he and his colleagues were notified by the Managing Director of a company known as Office Dynamics Limited that he had taken over the Respondents' business. They were invited to apply for new jobs upon which the Claimant was employed as a rider at a monthly salary of Kshs. 18,975 effective 1st February 2016.

8. It would appear that the Claimant never stayed out of work nor was his salary reduced. In the circumstances, the Court was unable to establish any case of redundancy and the Claimant's claim on this account therefore fails and is dismissed.

9. The claims for leave pay and accrued commissions were not proved and are also dismissed.

10. In the end, the Claimant's entire claim fails and is dismissed with no order for costs.

11. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 4TH DAY OF JANUARY 2018

LINNET NDOLO

JUDGE

DELIVERED IN OPEN COURT AT NAIROBI THIS 26TH DAY OF JANUARY 2018

MAUREEN ONYANGO

JUDGE

Appearance:

Douglas Muema Nzioka (the Claimant in person)

No appearance for the Respondent