



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 2280 OF 2016

(Before Hon. Justice Mathews N. Nduma)

BENARD KIMEU.....CLAIMANT

VERSUS

CREATIVE CONSOLIDATED SYSTEMS LIMITED.....RESPONDENT

JUDGEMENT

1. The Claimant was employed by the Respondent pursuant to an oral contract of employment as a steward on 13th December, 2007.
2. The Claimant worked continuously until 7th April, 2016 when he voluntarily resigned from employment. At the time of resignation, the Claimant had risen to a supervisor and earned a gross monthly salary of Kshs.13,000 made up of a basic salary of Kshs.10,660 and house allowance of Kshs.2,340.
3. The Claimant produced a pay slip for the months of June to August, 2013 indicating the above salary.
4. By a letter dated 1st July 2016, the Respondent purported to appoint the Claimant on a two year contract from 1st July, 2010 to 30th June, 2012 as a gardener.
5. The Claimant states that between 13th December, 2007 when he started working to 30th May 2013 the house allowance of Kshs.2,340 was not paid.
6. The Respondent also paid no contribution to any registered pension fund including NSSF on behalf of the Claimant.
7. The Claimant seeks the following reliefs:-
 - a. Payment in lieu of 21 days leave in the sum of Kshs.10,500.
 - b. Payment of service pay for 8 years worked calculated at 15 days salary for 8 years in the sum of Kshs.60,000.
 - c. Unpaid house allowance for five (5) years in the sum of Kshs.260,000 less one month's salary in lieu of notice.

The Claimant also seeks –

d. Certificate of service in terms of section 51 of the Employment Act, 2007.

8. Claimant issued a letter of demand but was neglected by the Respondent.

Response

9. The Memorandum of Claim was served on the Respondent on 9th December, 2016. The Respondent filed Memorandum of Appearance through Mugambi & Kariuki Co. Advocates on 19th December, 2016. However the Respondent did not file any Memorandum of Defence and an application to proceed to formal proof was granted on 21st June, 2017 to take place on 18th September, 2017.

10. The Claimant testified on oath and adopted the written statement filed together with the statement of claim on 9th November, 2016 as his evidence in chief.

11. The court has considered the statement of claim and the annexures thereto together with the testimony by the Claimant under oath and has come to the conclusion that the Claimant has proved his case on a balance of probabilities in the absence of any rebuttal by the Respondent.

12. Accordingly, the Court finds the following reliefs to have been proved and award the Claimant against the Respondent:-

a. Kshs.10,500 in lieu of 21 days leave not taken.

b. Kshs.60,000 being service pay calculated at 15 days salary for eight years based on the last monthly gross pay earned by the Claimant at Kshs.13,000.

c. Unpaid house allowance for five (5) years calculated at 15% of the basic salary earned by the Claimant at the time of resignation in the sum of $(13,000 \times 15\% \times 12 \text{ months} \times 5 \text{ years}) = 117,000$.

Total award Kshs.187,500

Less one month salary in lieu of notice (Kshs.13,000)

Net award Kshs.187,500.

d. Certificate of Service for 8 years.

e. Interest at Court rates from date of filing suit till payment in full.

f. Respondent to pay costs of the suit.

g. Implementation be within 30 days of this Judgment.

Dated and Signed in Kisumu this 18th day of December, 2017

Mathews N. Nduma

Judge

Delivered and signed in Nairobi this 19th day of January, 2018

Maureen Onyango

Judge

Appearances

J. K. Rutto for Claimant

Mugambi & Kariuki & co. Advocates for Respondent

Anne Njung'e – Court Clerk