



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1521 OF 2015

(Before Hon. Lady Justice Maureen Onyango)

WAMBUA MUTUA.....CLAIMANT

-Versus-

SOFTWARE TECHNOLOGIES LIMITED.....RESPONDENT

JUDGMENT

By statement of claim dated 26th August 2015 avers and filed on 28th August 2015, the claimant Wambua Mutua avers that he was employed as a Technical Consultant by the respondent and later promoted to the position of Senior Technician from 2003. He states that he resigned from work in June 2013 due to persistent none payment of his salary. As at the time of resignation, he avers that he was owed the sum of Kshs.314,208 in arrears of salary.

He further avers that he had only taken 21 days leave during the entire 9 years that he worked for the respondent. He thus prays for the following remedies: -

a) Salary in arrears	314,208/=
b) 189 unspent leave days	1,323,000/=
c) Housing allowance 10 years at 15%	2,700,00/=
d) Severance pay	1,050,000/=
e) Redundancy pay 3 months	450,000/=
f) General damages for breach of contract and unlawful termination	<u>1,800,000/=</u>
Total:	7,637,208/=

- g) Interest on a) to f) above;
- h) Costs of the suit
- i) Any other remedy the court may deem fit to grant.

The respondent entered appearance under protest on 30th November 2016 through E. M. Washe & Associates Advocates but did not file any defence. The case therefore proceeded for hearing on 23rd January 2018 as an undefended claim.

At the hearing, the claimant testified that he was employed by the respondent on 1st July 2003 as Assistant Technical Consultant. He was later promoted to Senior Technical Consultant. He was deployed in Uganda where he worked for about 5 years when the respondent's contract in Uganda was cancelled and he was redeployed to Kenya. From the time he was redeployed in Kenya, the respondent failed to pay

his full salary in time. He sought audience with the respondent over the matter but was ignored. Due to frustrations, he resigned from employment. He testified that according to him, the company felt he was redundant from the time the Uganda contract was cancelled, as he was not assigned any work after reporting back to the Kenya office.

The claimant testified that at the time of leaving work, his salary was Kshs.185,000. He testified that the respondent made multiple partial payments of his salary after he resigned but did not clear the outstanding arrears of salary. He made several calls and sent several short phone messages (SMS) but did not get any response.

The claimant testified that during the 10 years he worked for the respondent, he only took about 9 leave days but was entitled to 21 days a year.

The claimant prayed for judgment as prayed.

Determination

The claim herein is undefended. There is therefore no denial of the facts as averred in the claim in relation to the existence of employment relationship. There is a letter of employment confirming existence of employment relationship and salary payable. What is for determination is therefore if the claimant is owed the amounts claimed.

(a) Salary in Arrears

The claimant claims Kshs.314,208 in arrears of salary. Since this is not contested and based on tabulation at appendix WM4, I award the claimant the sum of kshs.314,208 on account of arrears of salary.

(b) 189 Leave Days

The claimant claims 189 unspent leave days at Kshs.1,323,000/=. He testified that from the time he was employed, he took only 9 days leave. He did not state when he took the leave.

I will therefore award him leave for only 3 years prior to his resignation being 63 days as he did not adduce evidence to enable the court treat the leave as a continuous injury under Section 90 of the Employment Act. This translates to Kshs.388,500 which I award the claimant.

(c) House Allowance

The claimant has claimed house allowance at 15% of salary for 10 years. This is in contradiction to his appendix WM3 which provides that the respondent would be pay rent at US Dollars 300 per month.

The court finds that the respondent paid the claimant US Dollars 300 per month and the claim of rent is therefore not proved. The same is dismissed.

(d) Severance Pay

The claimant was not declared redundant but resigned as expressly pleaded in paragraph 10 of the statement of claim. The prayer is thus dismissed.

(e) Redundancy Pay

Like prayer (d) above, the prayer for redundancy pay, although alien to the law, is also dismissed, as the claimant was not declared redundant.

(f) General Damages for Breach of Contract

The claimant did not plead constructive dismissal and is therefore not entitled to damages or compensation on account of unlawful termination having himself terminated the employment contract by resignation. The prayer is therefore dismissed.

(g) Interest

Award for salary arrears will attract interest at court rates from date of filing suit while the other awards will attract interest from date of judgment.

(h) Costs

The respondent will pay claimant's costs for this suit.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 20TH DAY OF APRIL 2018

MAUREEN ONYANGO

JUDGE