



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO 565 OF 2017

KENNEDY KAHINDI KAZUNGU.....CLAIMANT

VS

BARRELS WINES & SPIRITS LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. The Claimant's claim brought by a Memorandum of Claim dated 4th July 2017 and filed in court on 12th July 2017 is for payment of terminal dues. The Respondent did not file a reply in spite of due service.
2. The matter therefore proceeded for formal proof on 7th March 2018. The Claimant also filed written submissions.

The Claimant's Case

3. The Claimant states that he was employed by the Respondent from 9th December 2004 until 10th February 2017 when he resigned. His claim is for:
 - a) Leave pay for 13 years.....Kshs. 136,500
 - b) Service pay for 13 years.....97,500

Findings and Determination

4. The single issue for determination in this case is whether the Claimant is entitled to the remedies sought. During the hearing, the Claimant testified that he took all his leave. He therefore abandoned the claim thereon.
5. The only surviving claim is therefore the one for service pay. The Claimant produced his pay slip for January 2011 showing that he was a contributing member of the National Social Security Fund (NSSF). Section 35(6) of the Employment Act provides that employees who are members of NSSF do not have an automatic right to service pay. The claim for service pay therefore fails and is dismissed.
6. In the final submissions filed on behalf of the Claimant on 21st March 2018, an attempt was made to introduce an element of constructive dismissal. The only thing I will say is that this point was neither pleaded nor canvassed at the trial. It cannot therefore be introduced in final submissions.
7. In the end, the Claimant's entire claim fails and is dismissed with no order for costs.
8. It is so ordered.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 10TH DAY OF MAY 2018

LINNET NDOLO

JUDGE

Appearance:

Mr. Nyongesa h/b Mr. Khatib for the Claimant

No appearance for the Respondent