



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO.1530 OF 2015**

**PATRICK AMBURA ANGWEYE..... CLAIMANT**

**- VERSUS -**

**KEL CHEMICALS LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 22<sup>nd</sup> June, 2018)

**JUDGMENT**

The claimant filed the memorandum of claim on 01.09.2015 through Ameli Inyangu & Partners Advocates. The prayer is for:

- a. Unpaid terminal dues for 1980 to 1995 Kshs.87, 696.00.
- b. Salary for May 2015 Kshs.11, 716.00.
- c. Deductions made to claimant's terminal dues Kshs.18, 259.00.
- d. Total Kshs.117, 671.00.
- e. Costs of the suit plus interest.

The claimant was employed as a machine operator in April 1980 and remained in the respondent's employment until 31.05.2015 when they mutually agreed that the claimant should retire. At retirement the claimant earned Kshs.13, 255.00 per month.

It was agreed that the claimant is paid 15 days for each year served in service pay but the respondent paid only effective 1996 instead of 1980. Further, salary for May 2015 was not paid. Further, the respondent made unexplained deduction of Kshs. 18,259.00 from the claimant's final dues. The claimant filed the present suit to claim the unpaid terminal dues.

The respondent filed the response on 21.10.2015 through Otieno Maangi & Company Advocates. The defence stated as follows:

- a. The CBA provided that the claimant would earn service pay from 01.01.1996. Service pay for 01.01.1996 to 2015 was paid.
- b. The claimant had worked from April 1980 to 2015 as claimed.
- c. The respondent denied the deduction of Kshs.18, 259.00 from final dues.
- d. The respondent contributed NSSF from 1980 to 1996 and throughout the service.

Despite service the respondent did not attend the hearing and did not present a witness. The claimant testified to support his case. The Court makes the following findings:

- a. The claimant testified that the mutual agreement was that he be paid 15 days for each year of service. The respondent has pleaded that the service pay was not due under a CBA provision but the CBA was not filed. The court returns that the claimant has established the claim on a balance of probabilities.
- b. The respondent has offered no explanation about the claim for May 2015 salary. The respondent admits that the claimant worked up to 31.05.2017. The Court returns that the claimant has established the claim and prayer.

c. The claimant testified that he did not know the computed arrears. The claim for deducted arrears will therefore fail as not established.

In conclusion judgment is hereby entered for the claimant against the respondent for:

1. The respondent to pay the claimant **Kshs.99, 412.00** by 01.08.2018 failing interest at Court rates be payable thereon from the date of the suit till full payment.
2. The respondent to pay costs of the suit.

**Signed, dated and delivered** in court at **Nairobi** this **Friday 22<sup>nd</sup> June, 2018**.

**BYRAM ONGAYA**

**JUDGE**