

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

MICHAEL WANJAU GATHERU.....CLAIMANT

VERSUS

NAKUMATT HOLDINGS LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant's suit was filed in March 2017 and sought various reliefs against the Respondent. The Claimant averred that he was an employee of the Respondent as a shop assistant from 14th June 2007 till 24th December 2014 when the Claimant wrote a resignation letter to the Respondent giving a one and a half (1½) month notice in line with clause 28(b) of the Collective Bargaining Agreement (CBA). He averred that he served the Respondent at various places – West Gate, Nanyuki, Moi Avenue and Ridge Ways branches. The Respondent acknowledged the resignation on 14th March 2015 and stated that the resignation would take effect on 16th March 2015 and the Claimant would be paid his terminal dues upon clearing with the Respondent and returning all company property in his possession. In accordance with clause 28(d) of the CBA an employee whose contract was terminated in accordance with clause 28(b) was entitled to payment of 20 days severance pay for all the completed years of service. The Claimant averred that he earned Kshs. 40,269/- a month and that his demand was for the sum of Kshs. 206,714/- being his severance pay calculated as follows $40,269 \times 7.7 \times 20/30$.

2. The Respondent filed a defence in October 2017. In the defence, the Respondent averred that the Claimant did not give the requisite one month notice and wrote a resignation letter on 14th March 2015 effective immediately. The Respondent averred that it accepted the resignation as the Claimant did not want to continue working for the Respondent and that severance pay was only payable where there a redundancy was declared. The Respondent averred that the Claimant was not entitled to any sum claimed as his dues were paid upon the resignation. The Respondent averred that the suit should not have been filed in Nyeri but rather in Nairobi where the Claimant was last working and where the Respondent's witnesses hail from. The Respondent thus sought the dismissal of the Claimant's suit with costs.

3. The Claimant testified on 14th March 2018 and stated that he had worked for the Respondent for 7 years and resigned on 24th December 2014. He stated that he resigned and gave 45 days' notice as required and the Respondent accepted the resignation. In the letter acknowledging the resignation, the Respondent referred to his resignation letter. He sought payment of the sum due upon his resignation as the CBA made provision for payment of severance pay. He testified that the averments by the Respondent were lies as the requisite notice was given and acknowledged.

4. The Respondent did not appear nor send a representative despite the date having been taken by consent of parties. The Claimant therefore filed final submissions on 4th April 2018 and asserted that the Respondent had failed to pay his terminal dues and that the same were due together with interest from the effective date of the resignation till payment in full.

5. The Claimant's case is rather straight forward. He resigned giving the requisite notice and the Respondent made no payment as expected. The Claimant was expected to receive severance pay of 20 days pay for each completed year of service. The Claimant was entitled to the sum he claimed as severance pay as the clause in the CBA relating to the same provides as follows:

(d) An employee whose services are terminated shall be entitled to twenty (20) days severance pay for every year worked. This shall not apply to cases of summary dismissal.

The provisions of the CBA did not exclude resignations but only summary dismissal. There was no reference to redundancy in this clause and the averments in the Respondent's defence regarding the paucity of notice and the inapplicability of the severance package to the resignation were without foundation.

6. The Claimant's case was supported by facts and the truth of the matter is that he was entitled to the severance package that he sought. He proved his case on a balance of probability and therefore is entitled to the sum pleaded. I enter judgment for the Claimant against the Respondent for:

- i. Kshs. 206, 714/-
- ii. Interest at court rates from 16th February 2015 till payment in full
- iii. Costs of the suit
- iv. Certificate of service

It is so ordered.

Dated and delivered at Nyeri this 4th day of June 2018

Nzioki wa Makau

JUDGE