



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE. NO. 1195 OF 2016

PETER MUTUKU NTHUKU.....CLAIMANT

VERSUS

PERIMETER PROTECTION LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. The claimant was employed by the respondent as Security Guard on 4.6.1994 and worked until 9.8.2015 when he voluntarily retired on attaining the age of 55 citing medical ground. It is his case that after the retirement he was not paid his terminal dues plus overtime despite service of demand letter. The respondent has admitted that she employed the claimant on 4.6.1994 and the he voluntarily retired on 9.8.2015 upon attainment of age of 55. It is the defence case that upon receipt of the retirement letter, she requested the claimant to proceed on leave for one month which was outstanding and report back on 9.8.2015 for processing of his unpaid dues. It is further defence case that she calculated the claimant's terminal dues at Kshs.38,286 but he declined to collect the same.
2. The suit came up for hearing on 26.2.2018 but the counsel agreed to dispose of the same by written submissions on the basis of the pleadings, statements and documentary evidence filed. The claimant filed his on 20.4.2018 and the respondent filed hers on 15.5.2018

Analysis and Determination

3. After careful consideration of the material presented to me, I find no dispute in the fact that the claimant was employed by the respondent as Security Guard from 4.6.1994 to 9.8.2015 when he retired on attaining the age of 55 years and medical grounds. There is also no dispute that after the retirement the respondent assessed the claimant's terminal dues at Kshs.38,286 but he declined the same. The only issue for determination herein is therefore what is the correct quantum of terminal dues are payable to the claimant

Quantum of terminal dues

4. By the letter dated 9.7.2015, the respondent offered to pay the claimant one month salary in lieu of notice, uniform deductions refund plus salary for the days worked up to 9.8.2015. The dues were then outlined and calculated in the salary voucher for July 2015 at 38,286 net of Kshs.4,000 advance pay.
5. In the suit, the claimant claims one month notice of Kshs.15,501 made up of Kshs.10,912 basic pay Kshs.1,637 House Allowance and Kshs.2,952 Night Guard overtime. He has produced payslip for February 2015 to support that claim. I will reassess the said dues using the salary in the said payslip being Kshs.15,501. I therefore award the claimant Kshs.15,501 as one month salary in lieu of notice, Kshs.15,120 as uniform refund for 252 months at Kshs.60 per month. The claim for service pay is however dismissed because the claimant confirmed by the said payslip that he was a member of the NSSF and the employer remitted his NSSF contributions. Under section 35(6) of the Employment Act, members of NSSF are disqualified from claiming service pay from their employers upon termination like in this case.
6. The claimant has however asked me to make any other direction and orders as it may deem fit to meet the ends of justice in addition to the reliefs sought. Consequently I direct that the claimant's salary for July and August 2015 be paid as indicated by the respondent in her letter dated 9.7.2015. In addition the respondent is directed to calculate and pay the claimant's gratuity pay as provided by Regulation 17 of the Regulation of Wages (Protective Security Services) Order 1998 which provides that:

“(1) After five years’ service with an employer, the employee shall be entitled to eighteen days pays or every completed year of service by way of gratuity based on the employee’s wage at the time of termination of service.”

Conclusion and Disposition

7. In view of all the finding herein above, I enter Judgment for the claimant in the following terms:

- (a) One month salary in lieu of notice.....Kshs.15,501
- (b) Uniform refund.....Kshs.15,120
- (c) Salary for the days worked in July & August 2015
- (d) Gratuity at the rate of 18 days pay for each of the 11 completed year of service.
- (e) The unpaid salary plus the gratuity are to be assessed and paid by respondent to the claimant with 30 days of today

The claimant will also be issued with certificate of service forthwith. The award made is subject to statutory deductions. The claimant will also have costs plus interest from the date of filing suit.

Dated, Signed and Delivered in Open Court at Nairobi this 31st day of July, 2018

ONESMUS N. MAKAU

JUDGE