



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 1436 OF 2013

(Formerly CMCC No. 858 of 2013 at Nairobi)

SEVEN SEAS TECHNOLOGIES LIMITED.....CLAIMANT

- VERSUS -

WYCLIFFE OMWENGA.....DEFENDANT

(Before Hon. Justice Byram Ongaya on Tuesday 31st July, 2018)

JUDGMENT

The plaintiff filed the plaint on 21.02.2013 through Majanja Luseno & Company Advocates. The plaintiff prayed for judgment against the defendant for:

- a) Kshs.105, 983.00 together with interest thereon at Court rates from 1st December 2011 the date of filing the suit until payment in full.
- b) Costs of the suit together with interest thereon at Court rates from the date of judgment until payment in full.
- c) Such other or further relief the Honourable Court may deem fit and just to grant.

By the letter of appointment dated 16.09.2010 the plaintiff retained the defendant as a software engineer. The contract provided that the plaintiff would fund the defendant's training limited to payment of subscription fees, related travel, per diem and accommodation costs. In the event the defendant terminated by resignation or otherwise his employment with the plaintiff within 2 years of the date of his appointment, then the defendant would reimburse the plaintiff such sums that would have been incurred under clause 49(ii) referred to in the contract. The plaintiff benefited from the training clause and after the training and before lapsing of the 2 years as was agreed, the defendant terminated the employment by the letter dated 10.11.2011 and the plaintiff claims Kshs.105, 983.00 being sums due under the employee training agreement and notice pay in lieu of the termination agreement.

The defendant filed the defence on 18.06.2013 through Ndegwa Kiarie & Company Advocates. The defendant prayed that the plaintiff's suit be dismissed with costs.

The defendant denied that parties were in contract as alleged for the plaintiff and if such contract was concluded then it was the plaintiff who was in breach by failing to honour the contract of employment, and by being generally negligent and ignorant.

Despite service, the defendant failed to attend the hearing. The plaintiff's witness testified to support the plaintiff's case. The Court has considered the evidence and submissions on record. It is established that the plaintiff funded the defendant's training during the employment period from 15.12.2010 and 16.08.2011 and on 10.11.2011 resigned with immediate effect. The Court returns that the plaintiff is entitled to training costs Kshs. 76, 432.29 and pay in lieu of the agreed termination notice Kshs.40,000.00.

In conclusion judgment is hereby entered for the plaintiff against the defendant for:

- a) Payment of Kshs. 105, 983.00 by 01.12.2018 failing interest to run thereon at Court rates from the date of the suit till full payment.
- b) The defendant to pay the plaintiff's costs of the suit.

Signed, dated and delivered in court at **Nairobi** this **Tuesday 31st July, 2018**.

BYRAM ONGAYA

JUDGE