



**REPUBLIC OF KENYA**

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

**CAUSE NO. 750 OF 2012**

**DAMIANO ODOYO OGENGO.....CLAIMANT**

**VERSUS**

**TAPTOK LIMITED.....RESPONDENT**

**JUDGEMENT**

1. The claimant averred that he was employed by the respondent in 1995 and worked until 2011 when the respondent unlawfully terminated his services without notice and further refused to pay his terminal benefits.
2. The respondent in its memorandum of reply admitted that claimant was its employee and further stated that in November, 2010 it gave the claimant notice to retire in January 2011 due to old age. According to the respondent both parties mutually calculated the claimants dues which he was paid and retired. The respondent further averred that it remitted all the claimants NSSF deductions and any amount not remitted was paid to the claimant in cash by one Chemgorem after the respondent ceased operations.
3. At the oral hearing the claimant stated that he was terminated without payment. According to him he worked for 21 years and was paid only one month's salary upon termination of his services. The claimant therefore sought service pay.
4. In cross-examination he denied ever sitting down with the respondent to discuss his retirement. He however admitted signing he documents acknowledging receipt of some Kshs 7,700. The respondent's witness Ms Jane Chemgorem stated that the claimant worked for the respondent for long until he was aging and was no longer able to work effectively.
5. According to her, they sat down with the claimant and agreed that he needed to retire. They further agreed that the respondent would deduct from the claimant's pay the items he took or lost. The respondent paid the claimant Kshs 7,700/=. In cross-examination the claimant only stated that the respondent was a good person.
6. This matter strikes me as a simple case of an employee who has served for along period of time and had to retire due to old age. Both parties never tendered any evidence to show the separation was a disciplinary one. It was mutual.
7. The respondent paid and the claimant conceded, Kshs 7,700/=. A retiring employee requires either payment of service pay or pension in addition to other terminal benefits. On 1<sup>st</sup> July, 2015 I granted an order that the respondent files NSSF statements as further document. These document seem not to have been filed. The court would therefore only conclude that the claimant was not registered with NSSF.
8. In the circumstances the only award the court can make is on severance pay which would be calculated at 15 days pay for each year of complete service. The claimant worked for the respondent for 21 years and his exit salary he stated as Kshs 5000/=. The court therefore awards him Kshs 52,500 as service pay. The claimant shall further have costs of the suit.
9. It is so ordered.

**Dated at Nairobi this 6<sup>th</sup> day of July, 2018**

**Abuodha J. N.**

**Judge**

**Delivered this 6<sup>th</sup> day of July, 2018**

**Abuodha J. N.**

**Judge**