



**REPUBLIC OF KENYA**

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

**AT NAIROBI**

**CAUSE NO. 369 OF 2014**

**PAUL KINGORI GATWEKU.....CLAIMANT**

**- VERSUS -**

**PAWS AFRICA LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 6<sup>th</sup> July, 2018)

**JUDGMENT**

The statement of claim was filed on 11.03.2014 through C.G Waithima & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. Service due Kshs. 84, 420.00.
- b. Unremitted NSSF dues Kshs.10, 000.00.
- c. Unremitted NHIF Kshs. 7, 200.00.
- d. Unremitted medical insurance Kshs.24, 120.00.
- e. Interest on the above.
- f. Costs of the suit.

The response to the claim was filed 29.07.2015 through Musyoka Wambua & Katiku Advocates. It was prayed that the suit be dismissed with costs.

It is not in dispute that the respondent employed the claimant as a driver to transport Kenya Airways staff in a contract for service between the respondent and the said Kenya Airways. The employment was by the letter dated 01.02.2004. The contract of service between parties would terminate if the respondent's contract for service to provide transport services to Kenya Airways was terminated. The contract for services was terminated effective mid night of 10.06.2008. By the letter dated 11.06.2008 the respondent notified the claimant that turn of events and that the contract of service between the parties would terminate at mid night of 10.06.2008.

The only issue for determination in the case is whether the claimant is entitled to the remedies as prayed for. The Court has considered the pleadings, the evidence and the submissions and makes findings as follows:

- a. As submitted for the respondent the claimant was a member of NSSF and service pay of Kshs. 84, 420.00 as prayed will not be awarded in view of section 35 (6) of the Employment Act, 2007.
- b. The NSSF statement filed for the claimant shows deductions for NSSF were made and not remitted as claimed and the claimant is awarded the unremitted NSSF dues **Kshs.10, 000.00** as prayed for.
- c. On a balance of probability, the Court finds that the claimant has established that he is entitled to unremitted NHIF **Kshs. 7, 200.00** because he did not have the relevant card and the relevant authority stated that the records were not available yet the pay slip shows the monthly deduction in that regard.

d. The prayer for unremitting medical insurance Kshs.24, 120.00 is declined for want of justification and relevant evidence.

e . The respondent will pay part of the claimant's costs of the suit fixed at **Kshs. 10,000.00**.

In conclusion judgment is hereby entered for the claimant against the respondent for the respondent to pay the claimant a sum of **Kshs.27, 200.00** by 01.09.2018 failing interest at Court rates to be payable thereon from the date of the suit till full payment.

**Signed, dated and delivered** in court at **Nairobi** this **Friday 6<sup>th</sup> July, 2018**.

**BYRAM ONGAYA**

**JUDGE**