



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1124 OF 2010**

**JOHN KAMANDE.....CLAIMANT**

**VERSUS**

**FILM CORPORATION OF KENYA.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. This is a claim for terminal dues accruing in favour of the claimant after tendering his request for retirement. It is the claimant's case that he was employed by the respondent on 27.5.1987 as a Driver/Projector Operator and worked upto 4.2.2009 when he wrote to the respondent requesting for retirement. It is further claimant's case that the respondent wrote back on 2.3.2009 acknowledging that she owed the claimant his retirement dues but beseeched him to continue with his duties until the dues were paid to him because at that moment she was facing financial problems. The dues were never paid and hence this suit.

2. The respondent has admitted that the claimant terminated his contract of employment by serving a notice to voluntarily retire at the end of February 2009, which she accepted. She however denied writing the letter dated 2.3.2009 and averred that it was a forgery. She further denied owing the claimant any service pay or other terminal dues and averred that the claimant was a member of the NSSF where she remitted his contributions upto February 2009. On the other hand, she accused the claimant of fraudulently receiving salary after retirement in February 2009 till May 2010 totalling to Kshs.195,260 of which she counterclaimed against the claimant.

3. The claimant has however denied the alleged fraud and prayed for the counterclaim to be dismissed with costs. The issue for determination is whether the reliefs sought by the suit and the counterclaim should be granted. The suit was heard on 14.3.2018 when the claimant testified as Cw1 but the respondent never attended the hearing but only send her counsel to represent her. After the hearing, the claimant's counsel filed written submissions.

**Claimant's Evidence**

4. The claimant stated that he was employed by the respondent on 27.5.1987 as a Driver/Projector Operator by the appointment letter dated the same date. He worked until August 2008 when he wrote a letter to the respondent requesting for retirement and she responded on 4.2.2009 stating that his dues were to be calculated. His salary at that time was Kshs.13,384 per month after several years of review. By the letter dated 2.3.2009, the respondent told him that she had no money to pay for his terminal dues and advised him to continue working which he did. He worked for 9 months earning the same salary of Kshs.13,384 per month until 2010 when he found the gate to the respondent's premises locked and the Watchman told him that there was no more job.

5. He then reported the matter to his trade union and his dues were calculated at Kshs.550,477 which he took to the respondent but the dues were never paid. He denied forging the letter dated 2.3.2009 and contended that he was told to continue working and he was paid for the work done. He admitted that he was a member of the NSSF and that he was paid his benefits by the NSSF after the retirement. He however prayed for the terminal dues sought plus costs and interest.

**Analysis and Determination**

6. There is no dispute that the claimant was employed by the respondent from 27.5.1987 until February 2009 when he retired from employment. There is also no evidence by the defence rebutting the claimant's evidence that he was told to continue working after the retirement because there was no money to pay for his terminal dues. The respondent has also not tendered any evidence to prove that the claimant received salary fraudulently after retirement and as such, the counterclaim fails.

7. On the other hand, the claim for terminal dues is based on the schedule of calculation dated 5.7.2010 by the claimants union. The sum claimed is Kshs.550,477 made up of salary underpayment, House Allowance and service gratuity. There is however, no legal or contractual basis upon which the said sum was calculated. The claim of Kshs.550,477 must also fail.

**Conclusion and Disposition**

8. For the foregoing reasons that both the claim and the Counterclaim have not been proved on a balance of probability, they are both dismissed with no order as to costs. File closed.

**Dated, Signed and Delivered in Open Court at Nairobi this 17<sup>th</sup> day of August, 2018**

**ONESMUS N. MAKAU**

**JUDGE**