



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1056 OF 2010**

**KEVIN JAMES WOOD.....CLAIMANT**

**VERSUS**

**RIFT VALLEY RAILWAYS (K) LIMITED.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. The claimant was employed by the respondent as Group Financial Controller on 25.10.2006 and worked until 9.9.2008 when he was served with a termination notice of 3 months of which he was not required to work through. His terminal dues were not paid until 13.10.2009 when the respondent wrote to him offering a settlement at USD.101,365.82 payable on 12 equal instalments starting 1.1.2010. The sum comprised USD.88,509.64 retirement benefit findings USD.5,253.95 interest due, USD.10,406.87 accrued annual leave and USD.10,000 container allowance. The claimant accepted the offer as requested and the respondent paid the first two installments for January and February 2010 and defaulted on all the others. He has therefore brought this suit claiming the balance of is terminal benefits totalling to USD.84,471.52 plus General damages equalling to 2 months salary for the unfair and premature termination of his 5 years contract without any reason after serving for only 2 years. He has now brought this suit claiming the balance of USD.84,471.52 plus general damages equal to gross annual salary for the unfair termination of his 5 years contract without any reason after serving for only 2 years. He also seeks for costs of the suit plus interest until payment in full.

2. The respondent admits that she employed the claimant on 25.10.2006 and terminated him by 3 months notice on 9.9.2008. The respondent admits writing the letter dated 13.10.2009 but avers that after deducting the advances taken by the claimant during his employment plus tax on the said advances, nothing remains owing to the claimant under the terms of settlement in the letter dated 13.10.2009. She therefore prayed for the suit to be dismissed with costs.

3. After a delay of 6 years, only the claimant was able to tender evidence but the respondent did not. After the hearing, the claimant filed written submissions which I have carefully considered herein.

**Claimant's Evidence**

4. The claimant testified that he was employed by the respondent on 21.10.2006 as Group Financial Controller. His basic salary was USD.20,986 per month. He worked until he was terminated effective 31.10.2018 but his dues were never paid until 13.10.2009 when by the letter dated 13.10.2009, the respondent offered to pay USD.101,365.82 as his terminal dues including his pension which he accepted by signing the offer letter. He contended that he was only paid USD.23,087.15 leaving the balance sought herein. Some of the money was meant to ferry his personal belongings while leaving Kenya.

5. He admitted receiving an advance of USD.12,804.64 from the respondent before commencing is employment but denied receiving other advance during his employment. He disagreed with the tax computation for 2 years amounting to Kshs.6,207,329.80 contending that he did not understand why the respondent used USD.263,993.87 as the taxable amount. He also contended that the computation did not exclude benefits and that his pension should not have been subjected to PAYE. In his view, only the interest earned should have been subjected to PAYE.

**Analysis and Determination**

6. There is no dispute that the claimant was employed by the respondent from 21.10.2006 till 31.10.2008. There is also no dispute that on 13.10.2009 the parties signed a settlement agreement where the claimant was to be paid USD.101,365.82 in 12 equal instalments starting January 2010. There is also no dispute that only USD.23,087 out of the USD.101,365.82 was paid. The issues for determination are:

(a) Whether the claimant is entitled to the outstanding balance of the agreed terminal dues.

(b) Whether the claim for General damages for unfair termination should issue.

### **Outstanding terminal dues**

7. The agreement between the respondent and the claimant on 13.10.2009 for payment of USD.101,365.82 has been presented to the court to interpret and enforce. None of the parties has challenged the validity of the agreement and as such, it is binding on the parties and it is enforceable by the court. Upon careful perusal of the agreement in the said letter dated 13.10.2009, I find it unambiguous and the intention of the parties was clear. It was for payment of unpaid remuneration of USD.12,804.64, company contributions to the retirement benefit fund of USD.88,509.64, interest dues of USD 5,253.95, accrued annual leave of USD.10,406.87 and container allowance of USD.10,000 totalling to USD 101,365.82. The said sum was to be paid in 12 equal instalments starting 1.1.2010 and each subsequent instalment being due and payable on or before the first day of each subsequent month thereafter until payment in full. The agreement further provided that should the respondent default in any single instalment, the claimant was at liberty to claim immediate payment of the outstanding balance. Finally, the agreement was clear that upon signing the acceptance to the offer, the claimant was to waive any and all other claims which he had against the respondent.

8. Having paid only USD 23,087 out of the USD.101,365.82, the respondent breached the settlement agreement dated 13.10.2009 and the claimant was entitled to sue for outstanding balance by dint of clause 4 of the agreement. The balance in my view was USD.78,278.82 and it should ordinarily be subjected to the lawful statutory deductions including the relevant tax . I will not compute the taxes herein but I will leave it to the employer and the Kenyan Revenue authority to do so on the sum agreed by the agreement letter dated 13.10.2009 only, because the respondent has not proved the alleged advances taken by the claimant during his period of service for which tax was allegedly not deducted.

### **General Damages**

9. The claim for unfair termination was not prosecuted. The claimant only prosecuted the breach of the terminal dues agreement dated 13.10.2009. I therefore dismiss the claim for General damages for unfair termination.

### **Conclusion and Disposition**

10. For the reason that the respondent breached a clear contract for payment of terminal benefits, I enter judgement for the claimant in the sum of USD.78,278.82 plus costs and interest at court rates from the suit till payment in full. The said award shall be subjected to the relevant statutory deductions as directed herein above.

**Dated, Signed and Delivered in Open Court at Nairobi this 28th day of September 2018**

**ONESMUS N. MAKAU**

**JUDGE**