



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1155 OF 2015**

*(Before Hon. Justice Mathews N. Nduma)*

**LEONARD MBUI OPOKOU.....CLAIMANT**

**VERSUS**

**ONESMUS NGUNJIRI NJENGA**

**T/A ROCK AIR MAINTENANCE.....RESPONDENT**

**J U D G M E N T**

1. The suit is premised on Amended Statement of Claim dated 27<sup>th</sup> October, 2015 and filed on 13<sup>th</sup> November, 2015. The Claimant seeks the following reliefs:-

- |   |              |
|---|--------------|
| a. Three (3) months salary in lieu of notice, | Kshs. 90,000 |
| b. Arrear Salary                              | Kshs.161,000 |
| c. 52 untaken leave days                      | Kshs. 60,000 |
| d. Service gratuity for 2 years               | Kshs. 60,000 |
| e. House Allowance for two years              | Kshs. 72,000 |
| f. Unpaid NSSF deduction for two years        | Kshs. 90,000 |
| g. Damages for wrongful termination           |              |
| h. Costs and interest.                        |              |

2. The Respondent was served with the initial claim and entered appearance through Gitonga Kinyanjui & Co. Advocates on 21<sup>st</sup> August, 2015. On 17<sup>th</sup> November, 2015, the Respondent was served with amended statement of claim.

3. The Advocates for the Respondent received several mention and hearing notices but did not file any statement of defence nor attend court.

4. The matter proceeded to formal proof on 14<sup>th</sup> October, 2016.

5. The claimant has proved the following facts on a balance of probabilities:-

That he was employed by the Respondent from 2011 to 2013. That in January, 2014 the Claimant was summarily dismissed without any reasonable cause and without payment of any terminal benefits. The Claimant earned Kshs.30,000 a month. The Claimant entered into agreement with Respondent on 7<sup>th</sup> September, 2015 to be paid Kshs.161,000 upon acknowledging receipt of Ksh.25,000 paid on 14<sup>th</sup> April, 2015.

6. The Claimant presented the agreement before court. The amount in the Agreement is only in respect of arrear salary set out therein. The Claim for Arrear Salary is duly proved and the court awards the Claimant Kshs.161,000 arrear salary.

7. The Claimant has also demonstrated that he had not taken 52 days leave and had not been paid in lieu thereof. The court awards him Kshs.60,000 in lieu of leave.

8. The Claimant was deducted NSSF dues but same was not remitted. The court awards him one month salary being service gratuity for the two years served in the sum of Kshs.30,000. Claimant is also awarded one month's salary in lieu of notice.

9. The claim for unpaid house allowance has not been proved and same is dismissed. Similarly, the claim for refund of NSSF dues is refused in view of the award of service gratuity.

### **Compensation**

10. The Claimant was unlawfully and unfairly dismissed. He had served diligently for two (2) years. He was not paid terminal benefits upon dismissal and was not given any notice of intended dismissal. He suffered loss and damage. The court awards him two (2) months salary in compensation in terms of section 49(1)(c) and 49(4) of the Employment Act, 2007 in the sum of Kshs.60,000.

11. In the final analysis, judgment is entered in favour of the Claimant as against the Respondent as follows:-

- a. Kshs.30,000 in lieu of notice.
- b. Kshs.161,000 arrear salary.
- c. Kshs.60,000 in lieu of leave.
- d. Kshs.30,000 service gratuity.
- e. Kshs.60,000 compensation.

**Total Award 341,000/-.**

f. Interest at court rates from date of filling suit till payment in full in respect of a – d above and from date of judgment in respect of e above.

g. Costs to follow the event.

**Dated and Signed in Kisumu this 12th day of October, 2018**

**Mathews N. Nduma**

**Judge**

**Delivered and signed in Nairobi this 26<sup>th</sup> day of October, 2018**

**Maureen Onyango**

**Judge**

### **Appearances**

Ochieng & Co. Advocates for Claimant

Gitonga Kinyanjui & Co. Advocates for Respondent

Daniel Ngumbi – Court Clerk