



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**CAUSE NO. 89 OF 2016**

*(Before Hon. Lady Justice Maureen Onyango)*

**ALPHAS MASOLIA OKINDA.....CLAIMANT**

**VERSUS**

**SOVEREIGN HOTEL LIMITED.....RESPONDENT**

**JUDGMENT**

The claimant filed this suit against the respondent, Sovereign Hotel Limited alleging that the respondent failed to pay his terminal dues after his resignation which was to take effect on 3<sup>rd</sup> July 2015. Seeks the following remedies –

- (a) Three (3) months unpaid salary totalling to Kshs.230,452.20.
- (b) Payment for 14 days of accrued leave totalling to Kshs.49,635.90
- (c) The respondent to issue to the claimant all and singular certificates of all the statutory contributions and pension scheme as at the date of termination.
- (d) Costs of this suit.
- (e) Interest on (a), (b) and (d) above from the date hereof until payment in full.
- (f) Such other or further orders and and/or relief as the court may deem just and fit to award.

In its statement of defence the respondent denies all the averments in the memorandum of claim except the description of parties and jurisdiction of the court.

At the hearing the claimant testified that he was employed by the respondent as Marketing and Sales Manager from 15<sup>th</sup> February 2013 and resigned on 15<sup>th</sup> June 2015. He stated that at the time of resignation he had not been subjected to any disciplinary process. He was owed salary for May, June and Part of July 2015. His last salary was Kshs.150,000 per month. He was owed Kshs.230,452 in unpaid salaries and 14 days' pay in lieu of leave at Kshs.49,635. He testified that the respondent acknowledged owing him the money.

For the respondent MR. JAMES MCTOUGH, the Managing Director, testified that the claimant who was the respondent's Sales and Marketing Manager was owed only one month's salary, that the claimant deserted duty under the guise that he was on leave during the last month of service, towards the end of June. He stated that he did not know how long the claimant worked for the respondent or whether he took his leave for previous years as he was not dealing with human resource issues. He stated that the claimant is not entitled to leave as he deserted work.

Under cross-examination, Mr. McTough stated that he had not produced documents to prove that the claimant was paid salary. He stated the claimant was entitled to 24 days leave.

**Determination**

The only issue for determination in this claim is whether the claimant is entitled to the prayers sought.

As admitted by Mr. McTough in his evidence, he did not have any records to prove that the claimant was paid salary for May, June and July 2015 as claimed. Under Section 10(6) and (7) of the Employment Act it is the employer's burden to submit all employment records failing which the employer must controvert the averments of the employee. The respondent herein has not controverted the evidence of the claimant with the result that the court can only presume the uncontroverted evidence of the claimant to be true.

In the letter responding to the resignation of the claimant, the respondent states as follows in respect to the terminal dues of the claimant –

*“Your final dues will be calculated as follows; -*

- *Worked days up to 3<sup>rd</sup> of July 2015.*
- *14 days annual leave balance.*
- *Less any advances owed to the company.”*

No advances have been claimed by the respondent.

In the circumstances I find that the claimant is entitled to salary for May, June and up to 3<sup>rd</sup> July 2015 as claimed in the sum of Kshs.230,452.20, pay in lieu of 14 days annual leave in the sum of Kshs.49,635,90, costs and interest.

Interest on the unpaid salary and leave will accrue from date of filing suit as the court is of opinion, based on the blanket denials and the admission in the documents and in the evidence of Mr. McTough that the reason for non-payment was to delay the payment and thus punish the claimant.

The respondent shall also issue a certificate of service to the claimant.

The prayer for certificates of all the statutory contributions and pension scheme to date of termination is rejected as it is vague.

**DATED AND SIGNED AT NAIROBI ON THIS 8<sup>TH</sup> DAY OF OCTOBER 2018**

**MAUREEN ONYANGO**

**JUDGE**

**DATED AND DELIVERED AT KISUMU ON THIS 25<sup>TH</sup> DAY OF OCTOBER 2018**

**MATHEWS NDERI NDUMA**

**JUDGE**