



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR

RELATIONS COURT AT NAIROBI

CAUSE NUMBER 1902 OF 2016

BETWEEN

DONALD ELIAKIM OHON.....CLAIMANT

VERSUS

HABO GROUP OF COMPANIES LIMITED....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Mbiriri Ngugi & Company Advocates for the Claimant

Bosire & Partners, Advocates for the Respondent

JUDGMENT

1. The Claimant filed his Statement of Claim on 14th September 2016. He states he was employed by the Respondent as Group Business Development Manager on 1st September 2015. His contract was terminated by the Respondent after 5 months, over what he states was internal politics. He cleared with all departments of the Respondent. His terminal dues were calculated by the Respondent at Kshs. 188,117. The Respondent did not pay this amount. There were promises for payment which never materialized. The Claimant also found out that the Respondent deducted from his salary, PAYE tax, N.H.I.F and N.S.S.F contributions, but did not remit to the various bodies. He prays for Judgment against the Respondent for:-

- a. Terminal dues at Kshs. 188,117, with interest from 15th February 2016, until payment is made in full.
- b. An order compelling the Respondent to fully remit Claimant's statutory deductions up until the date of termination to the respective bodies.
- c. General damages.
- d. Costs and interest.

2. The Respondent filed its Memorandum of Appearance on 17th January 2018. No Response was ever filed. There was no attendance on the part of the Respondent, when the matter was scheduled for procedural directions. Affidavits of service on record show the Respondent was notified of proceedings at every turn. The Respondent kept away. The matter came up for formal proof on 15th October 2018, during the Court's service week.

3. The Claimant adopted in his evidence, his Statement of Claim, Witness Statement and Documents on record. There is no dispute that he was employed by the Respondent. The Respondent terminated his contract, and undertook to pay his terminal dues. The Respondent

calculated these dues. The Respondent wrote a letter to the Claimant's Advocates on 7th March 2016 asking for more time to make payment. There was no payment, compelling the Claimant to file the Claim.

The Court Finds:-

4. The Claimant was employed by the Respondent as Group Business Development Manager on, or about, 1st September 2015. His contract was terminated by the Respondent after 5 months, on 15th February 2016. He states the decision was informed by internal politics. The Respondent alleged the Claimant's performance was poor. He was advised to clear with the Respondent to facilitate settlement of terminal dues. He cleared. The Respondent went on, to compute terminal dues as shown in Claimant's exhibit 2. The total dues were tabulated at Kshs. 188,117. The Respondent did not pay this or any other sum, having computed the dues, and given an undertaking in writing to pay.

5. The Respondent breached the contract of employment by refusal to pay terminal dues as tabulated. The Claimant has shown the Court he merits an order for payment of terminal dues, and general damages for breach of contract. There is no explanation from the Respondent why it was unwilling to honour its undertaking. Terminal dues must be paid promptly to enable the Employee, mitigate the loss of consistent income, and the loss of social security, employment afforded him. The Respondent acted in breach of contract. The Claimant is allowed the prayers for terminal dues and contractual damages.

6. On payment of statutory dues to KRA, N.S.S.F and N.H.I.F, the Court is not in a position to order that the Respondent complies. There are legal regimes through which payments, if found due, can be enforced. The particular bodies who are said to be owed these dues have not given evidence in this Claim. Some of documents in support of the Claim are stated to be provisional statements. There are no documents in support of the claim relating to PAYE. The Court is not able to compel the Respondent to pay taxes and statutory contributions, allegedly deducted from the Claimant's salary and which are stated to be unremitted. The Claimant ought to pursue enforcement under the legal regimes creating PAYE, N.S.S.F and N.H.I.F.

7. The Respondent knew from the date of termination, on 15th February 2016, that it owed Claimant terminal dues. Computation was done by the Respondent. There were promises made for payment. No payment was made. The Claimant is entitled to have interest on terminal dues.

8. He is granted the prayer for terminal dues at Kshs. 188,117, and interest on terminal dues at 14% per annum from 15th February 2016, till payment in full.

9. He is allowed the prayer for damages for breach of contract, assessed at Kshs. 120,000.

10. Costs to the Claimant.

11. Interest on damages and costs granted at 14% from the date of Judgment till payment in full.

IN SUM, IT IS ORDERED:-

- a. The Respondent shall pay to the Claimant terminal dues at Kshs. 188,117, with interest at 14% on terminal dues, from 15th February 2016 till payment is made in full.**
- b. Damages for breach of contract allowed at Kshs. 120,000.**
- c. Costs to the Claimant.**
- d. Interest allowed on damages and costs at 14% per annum from the date of Judgment till payment in full.**

Dated and delivered at Nairobi this 19th day of October 2018.

James Rika

Judge