



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 244 OF 2015

(As Consolidated with Cause Nos. 245, 246 and 248 of 2015)

(Before Hon. Justice Mathews N. Nduma)

KENNEDY OKUKU.....CLAIMANT

VERSUS

ADOK TIMO MICRO FINANCE COMPANY.....RESPONDENT

J U D G M E N T

1. Cause No, 244 of 2015 was consolidated with cause Nos. 245 of 2015, 246 of 2015 and 248 of 2015. Cause No. 244 of 2015 is the lead file. The Claimants' rely on the averments in specific statements of claim and prayers thereof and exhibits annexed to each of the statements of claim to wit letters of appointment, pay slips and letters' of demand.
2. The respective statements of claim and summons to enter appearance were served on the Respondent on 13th July, 2015 by Chacha Mtundi Barnabas a licensed process server.
3. The Respondent did not enter appearance nor were statements of defence filed in all the consolidated cases.
4. The consolidated suit proceeded to formal proof on 3rd July, 2018. Mr. Joe Kiduma Claimant in Cause No. 245 and Mr. Kennedy Okuku Claimant in Cause no. 244, testified on behalf of all the Claimants.
5. The matters were not defended and therefore the testimony by CW 1 and CW 2 was un rebutted.
6. The brief uncontested facts are as follows:-

Kennedy Okuku

7. The Claimant was employed by the Respondent on 1st June, 2007 as a microfinance officer earning a monthly salary of Kshs.18,000. The Claimant worked continuously and diligently. The Claimant was not paid salary for six months. He stopped working in the year 2012 due to the hardships he was subjected to by the Respondent.

Joe Kiduma

8. The Claimant was employed by the Respondent as a Credit Officer on 7th June, 2007 at a monthly salary of Kshs.13,000. He worked continuously and diligently until year 2012. He was not paid salary for six months and stopped working due to the financial hardships he was subjected to.

Tom Oyugi

9. The Claimant was employed by the Respondent as a Community Mobiliser on 7th October, 2007 earning a monthly salary of Kshs.17,000. He worked continuously and diligently until the year 2012 when he stopped working. He was not paid salary for six months. He left due to financial hardship the Respondent subjected him to.

Joshua Ogolla Ogallo

10. He was employed by the Respondent on 16th September, 2007 as a Microfinance Officer at a monthly salary of Kshs.17,000. He worked continuously and diligently until the year 2012. He was not paid salary for four months and left employment due to the financial hardship he underwent at the hands of the Respondent.

Determination

11. The Claims for terminal benefits are undefended and have been proved on a balance of probabilities as follows:-

a) With respect to 1st, 2nd and 3rd Claimants, each one of them is awarded one month salary in lieu of notice and six (6) months unpaid, arrear salary.

b) With respect to the 4th Claimant, he is awarded four (4) months arrear salary and one month salary in lieu of notice.

Compensation

12. It is apparent the Respondent went under due to financial difficulties. The Respondent did not terminate the employment of the Claimants. They all simply faced reality and moved on. This would have been a case of declaration of redundancy but it was not pleaded that way. The Claimants have not proved any intentional or negligent conduct by the Respondent which would warrant an adverse decision against the Respondent. The Claimants have not made any claim for payment of severance pay or service gratuity.

13. It is the court's considered view that the Claimants have failed to prove on a balance of probabilities that they are entitled to compensation based on alleged constructive dismissal by the Respondent. Section 107, 108 and 109 oblige a party who wishes a set of facts to be found in their favour to prove the same. The Claimants have failed in this respect and the claims for constructive dismissal are dismissed.

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

A i) Kennedy Okuku Kshs.108,000

ii) Joe Kiduma Kshs.78,000

iii) Tom Oyugi Kshs.102,000

iv) Joshua Ogallo Kshs.68,000

B. The awards to be paid with interest at court rates from date of filing suit till payment in full.

C. Respondent to pay costs in respect of the four (4) consolidated suits.

D. For the avoidance of doubt, the claims for constructive dismissal were not proved and are dismissed.

Judgment Dated, Signed and delivered this 18th day of October, 2018

Mathews N. Nduma

Judge

Appearances

Mr. Obach for the Claimant

Mr. Orenge for Respondent

Chrispo – Court Clerk