



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 358 OF 2014

(Before Hon. Lady Justice Maureen Onyango)

ELROY MADEGWA.....CLAIMANT

VERSUS

GLOBAL TRUCKS LIMITED.....RESPONDENT

JUDGMENT

The Claimant was employed by the respondent as a truck driver until 21st May 2014 when he submitted his letter of resignation to the respondent, which was to take effect on 1st July 2014. It is the claimant's averment that upon handing in his resignation letter he was asked to take his outstanding annual leave of 30 days. He proceeded on leave on 28th May 2014.

The claimant avers that it was a term of his contract that upon leaving service he would be paid one month's salary for every year worked. It is further his averment that the respondent recovered Kshs.400 from his salary every month on account of NSSF but did not remit the same. He produced copies of his payslip reflecting the deductions and a statement from NSSF, which reflects only remittances in July 2004, May 2007 and September 2012 being a total of Kshs.1,200 was remitted for the entire period he worked.

In his claim dated 30th December and filed on 31st December 2014 he prays for the following remedies –

- i. Kshs.84,000/= being amount for 2½ years worked and unremitted NSSF Funds.
- ii. Costs
- iii. Interest
- iv. Any other relief that the court may deem just and fit to grant.

The respondent did not file an appearance or response to the claim although the affidavit of service reflects proper service upon the respondent.

The respondent again did not attend court for hearing although properly served with hearing notice as reflected in the affidavit of service.

The respondent further did not file any written submissions although properly served with claimant's submissions together with mention notice for taking of date for judgment.

At the hearing, the claimant reiterated the averments in the claim and his witness statement filed together with the claim.

Determination

The claim herein is undefended. There is evidence on record that the claimant was employed by the respondent as reflected in the contract of employment dated 29th June 2001 and payslips – documents 1 and 2 of the claimant's documents.

There is also evidence that the claimant resigned from employment as reflected in the letter of resignation dated 21st May 2014, document 5 of claimant's bundle.

There having been no defence, the claimant's evidence is uncontroverted. I am satisfied from the copy of payslips and NSSF statement that the respondent deducted Kshs.400 from claimant's salary, which was not remitted to NSSF. I am further satisfied that the claimant is entitled to gratuity at the rate of one month's salary for every year worked as reflected in his contract. The claimant's salary at the time of resignation was Kshs.26,720 per month.

I therefore enter judgment for the claimant against the respondent as follows–

1. Kshs.53,440 being 2 months' salary for the two completed years of service.
2. Kshs.19,600 being refund of unremitted NSSF contributions.
3. Costs
4. Interest

DATED AND SIGNED AT NAIROBI ON THIS 21ST DAY OF SEPTEMBER 2018

MAUREEN ONYANGO

JUDGE

DATED AND DELIVERED AT KISUMU ON THIS 11TH DAY OF OCTOBER 2018

MATHEWS NDERI NDUMA

JUDGE