



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 793 OF 2013**

*(Before Hon. Lady Justice Maureen Onyango)*

**JOHN GATHOGO MWANGI.....CLAIMANT**

*VERSUS*

**NETPLAN EAST AFRICA LIMITED.....RESPONDENT**

**JUDGMENT**

The Claimant in his Memorandum of Claim dated 19<sup>th</sup> April, 2013 and filed in Court on 24<sup>th</sup> May, 2013 alleges that the Respondent herein has failed to pay his terminal dues. The Claimant seeks for the following remedies: -

- a) Payment of full terminal dues owed to the Claimant of Kshs. 212,052.90
- b) Costs of the Suit
- c) Interest on (a) and (b)
- d) Any other relief that this Honourable Court may deem fit and just to grant

The Respondent filed a Defence to the Memorandum of Claim on 19<sup>th</sup> July 2013 in which it admits that the Claimant was its employee but denies that the Claimant is entitled to house allowance. The respondent contends that on or about 18<sup>th</sup> July 2011 it declined to renew the contract between it and the Claimant and a notice of non-renewal was issued to the Claimant to that effect on 18<sup>th</sup> July 2011.

The respondent contends that the Claimant is not entitled to the reliefs sought in his Memorandum of Claim and urges the Court to dismiss the Claim with Costs.

On 9<sup>th</sup> October 2017, the Claimant (CW1) in his testimony stated that he was employed by the Respondent on contract basis for 3 years. It was his further evidence that he left employment upon the expiry of his contract in 2011 and that he was not paid full salary in the months of April, June and July 2011.

CW1 further stated that his salary was Kshs.80,000 per month and that he was entitled to leave (37 days). That the total amount in terminal benefits that is due is Kshs.212,052.90 as itemised in the Memorandum of Claim.

CW1 prays that the Memorandum of Claim be allowed as drawn.

On cross examination the Claimant averred that he worked on contract basis which was terminated on 18<sup>th</sup> July, 2011 when he was served with a notice of non- renewal of the employment contract.

The Respondent's case was to be heard on 22<sup>nd</sup> January 2018. On the hearing date the Respondent opted to close its case without calling any witness. The parties thereafter filed and exchanged written submissions.

**Claimant's Submissions**

In the written submissions the Claimant reiterated the contents of the Memorandum of Claim and his oral evidence in Court.

The Claimant further submitted that upon expiry of his Contract of employment on or about 18<sup>th</sup> July 2011 the Respondent computed all the Claimant's outstanding terminal dues as evidenced by its letter dated 18<sup>th</sup> July 2011 produced in Court.

The Claimant submitted that the instant suit be allowed as prayed.

### **Respondent's Submissions**

It is submitted that the Respondent complied with the provisions of Section 35 (1)(c) of the Employment Act, 2007 which provides for termination notice.

It is further submitted that the Claimant was aware that the Contract would lapse after one year. For emphasis the Respondent relied on the following authority **George Makau & 2 Others v Label Converters Limited (2016) eKLR** where the Court held as follows;

*"...the contention that because the Contract had a provision for one month's notice of termination hence the Claimants were entitled to one month's notice is not sustainable. The notice provision could only apply in circumstances where the Contract was to be terminated prematurely which is not the case here."*

It is further submitted that parties are bound by the terms of their contract and where the intention is to have a fixed term contract for one year, such must be upheld as the intention of the parties. The Respondent relied on the case of **Wanjohi Muriuki versus Kirinyaga Water and Sanitation Co. Ltd & Another (2012) eKLR**.

The Respondent further submitted that the Claimant is not entitled to the reliefs sought and the Court should dismiss the Claim with costs.

### **Determination**

The claim herein is for terminal dues only. The terminal dues are set out in the respondent's letter dated 18<sup>th</sup> July 2011 which has been produced by both the claimant and the respondent. The contents of the letter are thus not disputed. The respondent filed a defence but did not call any witness.

The letter is reproduced below –

*"JOHN GATHOGO MWANGI*

*P. O. BOX 1453*

*NAIROBI*

*18<sup>th</sup> July 2011*

*Dear Sir*

**REF: RENEWAL OF CONTRACT**

*We refer to the above, and would like to inform you that the Company will not be renewing your contract which expires on 19<sup>th</sup> July 2011.*

*In the meantime we consider your terminal dues of Kenya Shillings, Two Hundred Twelve Thousand Fifty Two and Ninety Cents as follows: -*

*(a) Part of April 2011, Salary Kshs.45,209.00*

*(b) June 2011, Salary Kshs.54,509.00*

*(c) July 2011, Salary (19 days) Kshs.37,100.90*

*(d) Leave days (37 days) Kshs.75,134.00*

*(e) Certificate of Service.*

*Yours Faithfully*

*For and on behalf of NetPlan East Africa Limited*

**SIGNED**

