

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.409 OF 2013

JOSEPH MWANZIA MUTIE.....CLAIMANT

-VERSUS

KHETSHI DHARAMSHI & CO. LTD.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 23rd November, 2018)

JUDGMENT

The claimant filed the memorandum of claim on 26.03.2013 through Gakoi Maina & Company Advocates. The prayer is for:

- a) Payment of Kshs. 406, 037.00 being service or severance dues and benefits.
- b) Costs of the claim and interest.

The memorandum of response was filed on 05.06.2013 through Macharia – Mwangi & Njeru Advocates. The respondent prayed that the claimant's claim be dismissed with costs.

The undisputed facts are as follows:

- a) On 01.02.1998 the respondent employed the claimant as an Accounts Assistant and later promoted him to Supervisor Accounts Department.
- b) At termination of the contract the claimant earned Kshs. 43, 504.00 per month.
- c) On 01.02.2012 the claimant served the respondent a one month notice of termination of the contract of service as per terms of service. The termination took effect on 29.02.2012 and the respondent computed the claimant's final dues at Kshs. 6, 554.00.
- d) The claimant had served the respondent for 14 years as at the time of termination.

The claimant claims that the respondent violated section 35(5) of the Employment Act, 2007 by failing to pay service pay for the 15 years of service. The respondent's case is that service pay was expressly excluded in terms of section 35(6) of the Act because it was not in dispute that the claimant was a member of the National Social Security Fund and the parties not having a contractual term to pay service pay beyond the cited statutory provisions. The respondent further states that the clarification was made prior to filing of the suit and the claimant should pay costs of the suit.

The Court returns that there is no justifiable reason to disturb the respondent's submissions and the Court finds accordingly.

In conclusion judgment is hereby entered for the respondent against the claimant for dismissal of the claimant's memorandum of claim with costs.

Signed, dated and delivered in court at Nairobi this Friday 23rd November, 2018.

BYRAM ONGAYA

JUDGE