



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.1881OF 2011

STEEL STRUCTURES LIMITED CLAIMANT

- VERSUS -

HENRY KING'ARA NDUNG'U RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 2nd November, 2018)

JUDGMENT

The claimant filed the memorandum of claim on 10.11.2011 through Kelvin Mogeni Advocates. The claimant prayed for judgment against the respondent for:

- a) An injunction to restrain the claimant from joining any employer who is in similar business or deals with all of the products that the claimant manufactures or trades; and entering into any business which is in direct competition with the claimant, being for a period of one year from 12.09.2011.
- b) Kshs.87, 500.00 being pay in lieu of notice.
- c) Kshs. 450, 000.00 being sum paid for the respondent's training.
- d) Costs and interest.
- e) Any order directing the respondent to return the entire respondent's property in his possession.

Despite service the respondent failed to enter appearance, to file a defence, and to attend at the hearing.

The issue for determination is whether the claimant is entitled to the remedies prayed for. The Court makes findings as follows:

- a) The evidence is that the respondent employed the claimant by the letter of appointment dated 20.07.2006 effective 01.08.2006. The termination clause provided that either party could terminate by giving a two months' written notice or 2 months' pay in lieu of such notice. The term was varied by the respondent's letter of 23.09.2010 to one month notice or one month pay in lieu of notice for all senior management staff. The respondent deserted duty on 12.09.2011 without notice and the claimant by letter dated 26.09.2011 demanded payment of **Kshs. 87, 500.00** in lieu of notice. The Court returns that the claimant has established that claim and is awarded accordingly.
- b) The claimant paid the respondent's fees for Strucad training and by the letter dated 08.05.2009 the respondent was bonded that if he terminated employment before completion of 60 months immediately after the training, the respondent would reimburse the claimant the full training costs and any perils. When the respondent left employment on 12.09.2011, he breached the bond. The evidence is that the cost of training was **Kshs. 150, 000.00** and the claimant is awarded accordingly. There was no evidence for training cost of Kshs. 300,000.00 in 2008 as submitted for the claimant and the claim will be declined. It is also not clear how the bonding agreement or policy came to apply to the alleged training in 2008.
- c) The prayer for injunction was abandoned.
- d) The respondent signed on 01.09.2006 acknowledging to be in possession of the claimant's Casio Calculator Fx Asset No. 408877 and the same will be returned.

In conclusion judgment is hereby entered for the claimant against the respondent for:

a) The respondent to pay the claimant a sum of **Kshs.237, 500.00** by 15.12.2018 failing interest at Court rates to be payable thereon from the date of the filing of the suit till full payment.

b) The respondent to return to the claimant Casio Calculator Fx Asset No. 408877.

c) The respondent to pay costs of the suit.

Signed, dated and delivered in court at **Nairobi** this **Friday 2nd November, 2018**.

BYRAM ONGAYA

JUDGE