



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 1395 OF 2013

SAMSON KAMAU.....CLAIMANT

VS

MELLECH ENGINEERING & CONSTRUCTION LTD.....RESPONDENT

JUDGMENT

Introduction

1. By his Memorandum of Claim dated 29th August 2013 and amended on 17th September 2014, the Claimant has sued the Respondent for unpaid balance of final dues.
2. The Respondent's defence is contained in a Memorandum of Reply dated 23rd January 2014 and amended on 26th September 2014. The matter came up for hearing before me on 18th October 2018 during the Nairobi Station Service Week when there was no appearance for the Respondent in spite of due service. I therefore heard the Claimant *ex parte*.

The Claimant's Case

3. The Claimant states that he was employed by the Respondent on 1st December 2011, in the position of Head of Strategy and Business Development. The Claimant avers that owing to financial constraints faced by the Respondent, he resigned on the basis of mutual agreement. The resignation was to take effect on 31st July 2012. The Respondent acknowledged the Claimant's resignation by letter dated 16th July 2012 pursuant to which the Claimant was issued with a final dues statement.
4. The Claimant states that his net dues after tax amounted to Kshs. 836,179.60. He adds that on diverse dates, the Respondent made part payments amounting to Kshs.350,000 made up as follows:
 - a) Kshs. 200,000 paid on 11th September 2012;
 - b) Kshs. 70,000 paid in October 2012;
 - c) Kshs. 40,000 paid in December 2012;
 - d) Kshs. 40,000 set off by computer per mutual agreement.
5. The Claimant therefore claims the sum of Kshs. 486,179.60 being unpaid balance of his final dues.

The Respondent's Case

6. In its Memorandum of Response dated 23rd January 2014 and filed in court on 27th January 2014, the Respondent admits having employed the Claimant in the position of Head of Strategy and Business Development.
7. The Respondent states that the Claimant voluntarily resigned from employment on 16th July 2012, after realizing that he was not able to meet the targets of the Respondent as per letter of employment dated 14th March 2011.
8. The Respondent avers that the final dues statement dated 16th July 2012 in the sum of Kshs. 486,179.60 is skewed and overly exaggerated. The Respondent denies withholding any amounts owing to the Claimant.

Findings and Determination

9. The single issue for determination in this claim is whether the Claimant has proved his claim of balance of final dues in the sum of Kshs 436,176.60. In support of his claim, the Claimant produced a final dues statement issued by the Respondent on 16th July 2012.

10. According to this statement which was signed by the Respondent's Chief Executive Officer, Gerald Wamalwa, as at the date of exit, the Claimant was owed a net amount of Kshs. 808, 012 in salary arrears, notice pay and leave pay plus the sum of Kshs. 26,067.60 in mileage claims from December 2011 to June 2012.

11. The Respondent did not call any evidence either to discredit the final dues statement or to demonstrate that it was fully satisfied. It follows therefore that save for the amount of Kshs. 350,000 which the Claimant admits having received, the balance of terminal dues is due and payable.

12. Consequently, I enter judgment in favour of the Claimant and against the Respondent in the sum of Kshs. 484,079.60 being balance of final dues.

13. This amount will attract interest at court rates from the date of filing suit until payment in full.

14. The Claimant will have the costs of the case.

15. Orders accordingly.

DATED AND SIGNED AT MOMBASA THIS 17TH DAY OF DECEMBER 2018

LINNET NDOLO

JUDGE

DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER 2018

MAUREEN ONYANGO

JUDGE

Appearance:

Miss Njihiafor the Claimant

No appearance for the Respondent