



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 348 OF 2016

BETWEEN

CAROLINE WAMUYU NDIRANGU.....CLAIMANT

VERSUS

LTI KISSI SAFARI INNS

T/A KASKAZI BEACH HOTEL.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Ms. Katu Advocate holding brief for Ms. Mwainzi Advocate instructed by Oduor Siminyu & Company Advocates for the Claimant

No appearance for Nyameta Mogaka & Magiya Advocates for the Respondent

JUDGMENT

1. The Claimant was employed by the Respondent Hotel, as Management Secretary on 8th March 2004. She became the Sales Account Manager on 1st November 2013, earning a salary of Kshs. 80,000 per month. She was entitled to 5% commission for all materialized business she brought to the Hotel.
2. She resigned on 23rd September 2015. She was at the time owed net arrears of salary for the period July 2014 to September 2015 at Kshs. 843,074. She was owed net commissions of Kshs. 188,471; gratuity of Kshs. 440,000; and 3 days worked in October 2015 at Kshs. 7,890. Less deductions of Kshs. 171,179, she claims Kshs. 1,308,255 from the Respondent.
3. She also claims refund of Kshs. 20,200 deducted from her monthly salary for the period worked, in alleged N.S.S.F contributions. She prays for costs and interest.
4. The Respondent was served with the Summons, but did not file a Statement of Response.
5. Parties agreed on 26th October 2016, to have the Claim considered and disposed of on the strength of

the record. The Claimant filed her submissions on 7th November 2016. The Respondent did not file its submissions.

The Court Finds:-

6. The Claim is unchallenged.

7. The Claim is supported sufficiently, by the documents attached to the Statement of Claim. The letter of promotion dated 1st November 2013 adequately supports the prayer for arrears of salary and commission.

8. The letter from the Claimant to the Deputy General Manager dated 23rd September 2015 confirms the Claimant resigned with effect from 3rd October 2015.

9. Importantly, the Respondent through its Financial Controller Mary Wangeci, wrote to the Claimant on 23rd September 2015, accepting her resignation and undertaking to pay her arrears of salary and commissions, as outlined in the Statement of Claim.

10. Lastly there is Clearance Form duly filled and signed by the Parties. If this was a condition for release of the Claimant's dues, (payment of arrears of salary should not depend on clearance), the Claimant satisfied the condition, and the Respondent has no justification in holding on to her dues.

11. The Court is not able to conclude, from the N.S.S.F. Provisional Member Statement attached to the Claim that the Respondent made deductions on her salary and failed to remit. The monthly contributions are shown to have been made consistently, save on some months in 2014 and 2015. There is no proof that this default amounted to Kshs. 20,200. The N.S.S.F Statement is a provisional one. It was not conclusive, as would enable the Court to find the Claim for refund established to the required standard.

IT IS ORDERED:-

a) The Claimant is granted the prayer for gratuity; arrears of salary; days worked in October 2015; and commissions at Kshs. 1,308,255.

b) Costs to the Claimant.

Dated and delivered at Mombasa this 31st day of March 2017.

James Rika

Judge