



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 347 OF 2016

BETWEEN

EVERLYNE NDUNGWA KIOKO..... 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. Everlyne Ndungwa Kioko was employed by the Respondent Hotel, as an Information Technology Co-ordinator, effective 29th November 2013.
2. She earned a monthly basic salary of Kshs. 30,000, and house allowance of Kshs. 10,000, at the beginning.
3. The contract was renewed beginning 1st February 2015, ending 28th November 2015. Her gross salary was reviewed to Kshs. 47,500 per month. The contract was not renewed after this date.
4. Her Claim, filed on 11th May 2016, is that she was not paid salary for certain months, straddling the various contractual periods.
5. She prays the Court to grant her, against the Respondent arrears of salary detailed as follows:-
 - a) February 2015.....Kshs. 19,416
 - b) April 2015.....Kshs. 38,077

c) May 2015.....	Kshs. 38,077
d) June 2015.....	Kshs. 38,077
e) July 2015.....	Kshs. 38,077
f) August 2015.....	Kshs. 38,077
g) September 2015.....	Kshs. 38,077
h) October 2015.....	Kshs. 38,077
i) November 2015.....	Kshs. 38,077
j) 9 days payable-gross.....	Kshs. 14,055

Net amount Kshs. 13,617

Total **Kshs. 334,062**

6. The Claimant states the Respondent deducted a sum of Kshs. 6,000 in N.S.S.F. Contributions, but never remitted the same to the Fund. She prays for refund.
7. There was no Statement of Response filed. On 21st September 2016, the Parties' Advocates agreed to have the dispute considered on the strength of the record.
8. The Claimant subsequently filed her Submissions, while the Respondent once again, filed nothing.

The Court Finds:-

9. The Claimant has adequately established she is owed the arrears of salary claimed. The Claimant violated Part 4 of the Employment Act 2007, which demands salaries and wages are paid when they fall due. Salaries and wages are legally protected under this Part. Section 25 of the Employment Act makes it a criminal offence for an Employer to contravene the provisions of Part 4.
10. The Respondent repeatedly engaged in a criminal offence by withholding Claimant's salary for about 9 months.
11. The Respondent did not deny that it deducted Kshs. 400 monthly from the Claimant's salary, allegedly in N.S.S.F. contributions, which were never remitted to the Fund. There are pay slips exhibited by the Claimant to show these unremitted deductions.
12. The Court did not understand the item claimed under paragraph 5 (j) above described as, '9 days payable'

IT IS ORDERED:-

- a) The Respondent shall pay to the Claimant arrears of salary at Kshs. 324,032.***
- b) The Respondent shall refund to the Claimant the sum of Kshs. 6,000 wrongfully deducted from the Claimant's salary.***
- c) In total the Respondent shall pay to the Claimant Kshs. 330,032.***
- d) Interest allowed at 14% per annum, from 15th February 2015, till payment is made in full.***

e) Costs to the Claimant.

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

James Rika

Judge