



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 40 OF 2015

PETERSON ONGUTI MACHUKI CLAIMANT

V

MWANEGO COMPANY LIMITED RESPONDENT

JUDGMENT

1. Despite being served with a hearing notice on 6 December 2016, the Respondent, represented by the Federation of Kenya Employers, failed to appear during the hearing on 21 February 2017 (affidavit of service is on record).
2. The Claimant gave sworn testimony wherein he stated that he was employed by the Respondent in 2007 and that when he refused to sign a new contract (15 October 2014) before consulting a union he had joined (Kenya Union of Commercial, Food and Allied Workers), the Respondent's Managing Director directed him to return his overall and leave.
3. He contended that he was not given notice of termination or afforded a hearing.
4. On other terms and conditions of employment, the Claimant testified that some of his contributions to the National Social Security Fund and National Hospital Insurance Fund were not remitted.
5. The Claimant filed his written submissions on 24 March 2017 outside the set timeline (explained through letter dated 23 March 2017 to the Deputy Registrar).
6. The Claimant's testimony going unchallenged and/or uncontroverted, the Court reaches a conclusion that the termination of his employment was unfair (Respondent had contended in its Response filed outside the timelines granted by Court after seeking leave on 26 May 2015 that the Claimant deserted work and therefore was not dismissed but did not prove desertion as a valid and fair reason in terms of sections 43 and 45 of the Employment Act, 2007).

Remedies and Orders

Compensation

7. In terms of section 49(4) of the Employment Act, 2007 and considering that the Claimant served the Respondent for around 7 years, the Court is of the view that the equivalent of 7 months gross wages assessed as Kshs 85,498/- would be fair and appropriate (pay slip for October 2014 show gross pay of Kshs 12,214/-).

NSSF/NHIF contributions

8. The statutes governing the operations of the National Social Security Fund and National Hospital Insurance Fund have very robust mechanisms for dealing with unremitted contributions and the Claimant should use those mechanisms.

Pay in lieu of Notice

9. In terms of section 35(1)(c) of the Employment Act, 2007, the Court awards the Claimant Kshs 12,214/- as pay in lieu of notice.

Service pay

10. The Claimant, by dint of section 35(5) and (6) of the Employment Act, 2007 is not entitled to service pay by virtue of his contributions/membership to the National Social Security Fund.

11. In effect, the Court awards the Claimant

(a) Compensation Kshs 85,498/-

(b) Pay in lieu of Notice Kshs 12,214/-

TOTAL **Kshs 97,712/-**

12. Claimant to have costs.

Delivered, dated and signed in Nakuru on this 31st day of March 2017.

Radido Stephen

Judge

Appearances

For Claimant Ms. Wachira instructed by Wachira Wanjiru & Co. Advocates

For Respondent Federation of Kenya Employers

Court Assistant Nixon