



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 143 OF 2016

JAMES KAHUHO MUMBURA.....CLAIMANT

-VERSUS-

MOBICOM KENYA LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 5th May, 2017)

JUDGMENT

The claimant James Kahuhu Mumbura filed the memorandum of claim on 15.06.2016 through M.K Kiminda Advocate. The claimant prayed for judgment against the respondent for:

- a. Kshs.480,928.00 being 3 months in lieu of notice Kshs.75,936.00, pay in lieu of 8 years' annual leave **Kshs.202, 496.00**, and Kshs.202, 496.00 being service pay for 8 years.
- b. Costs of the suit and interest.
- c. Any other or better relief.

Despite service, the respondent failed to enter appearance, to file a defence or to attend at the date scheduled for the hearing. The claimant opted that the case be determined on the basis of the pleadings and documents on record together with the final submissions that were filed for the claimant.

The claimant's case is that he was employed by the respondent as a sales executive in April 2006. The claimant pleaded that his employment was verbally terminated on 17.04.2014 and the respondent served no termination notice and never accorded the claimant a hearing. The claimant pleaded that throughout the service of 8 years he was not given annual leave or paid in lieu of annual leave. The claimant relied upon the witness statement as filed together with the memorandum of claim. As per the payslip on record for March 2014, at termination the respondent paid the claimant a gross monthly salary of Kshs.25, 312.50.

The court has considered the memorandum of claim, the witness statement and the documents on record. The court makes findings as follows:

1. There is no reason to doubt that the parties were in employment relationship as pleaded for the claimant.
2. As the claimant was not given a termination notice, he is awarded **Kshs. 25, 312.50** being one month pay in lieu of notice. The award is under section 35(1) (c) of the Employment Act, 2007.

1. In absence of any other material on record, the court finds that on a balance of probability, the claimant has established that he worked for 8 years and he is awarded **Kshs.202, 496.00** in lieu of annual leave as prayed for and in accordance with section 28 of the Act.

3. The payslip filed shows that the claimant was a member of the NSSF and the court returns that he is not entitled to service pay as prayed for and in view of the provisions of section 35(6) of the Employment Act, 2007.

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

1. The respondent to pay the claimant **Kshs.227, 808.50** by 01.07.2017 failing interest at court rates to be payable thereon from the date of this judgment till full payment.

2. The respondent to pay the claimant's costs of the suit.

Signed, dated and delivered in court at **Nyeri** this **Friday, 5th May, 2017**.

BYRAM ONGAYA

JUDGE