



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

CAUSE NO. 184 OF 2015

(Originally Nairobi Cause No. 2112 of 2012)

MICHAEL KIIRU MUCHIRI

CLAIMANT

v

WARUHIU CONSTRUCTION LTD

RESPONDENT

JUDGMENT

1. Michael Kiiru Muchiri (Claimant) instituted legal proceedings against Waruhiu Construction Ltd (Respondent) on 18 October 2012 and the issue in dispute was stated as

Failure to pay terminal benefits to the Claimant.

2. The Claimant pleaded that he gave oral notice of intention to leave employment in May 2012 and a written notice on 12 July 2012, but the Respondent had refused to pay him benefits being annual leave for 12 years, paternity leave and severance pay, totalling Kshs 266,475/-.

3. In its Reply to the Memorandum of Claim, the Respondent contended that the Claimant gave insufficient notice of resignation and immediately thereafter deserted employment, that all accrued leave was paid (payment vouchers were attached) and that the claims presented were frivolous.

4. The Claimant did not file a rejoinder to the Respondent's Reply to Memorandum of Claim.

5. On 21 February 2017, Mr. Chege for the Claimant informed the Court that he would not call any witness (closed Claimant's case) but would rely on the record and submissions which had been filed on 16 November 2016.

6. Mr. Awuonda for the Respondent indicated that he would call 3 witnesses.

7. The Court therefore recorded the Claimant's case as close and scheduled Respondent's case for 7 March 2017. However, on the said date, the Respondent also opted to close its case without calling any witness.

8. The Court ordered the Respondent's case to be deemed as closed and gave it time for filing of submissions.

9. The Respondent filed its submissions on 24 March 2017.

10. The Court has given due consideration to the record and submissions and come to the conclusion that

the Memorandum of Claim lacks merit and should be dismissed for the following reasons.

11. One, the Claimant did not file any rejoinder to the Respondent's documents that he was paid a total of Kshs 60,000/- on account of accrued/outstanding leave.

12. Two, the Claimant did not lead any evidence that he qualified for paternity leave or that he should have been paid in cash for the paternity leave in addition to the normal salary he was entitled to. Equally, there was no evidence that remuneration was not paid during the alleged period(s) or the particular years he was entitled to the leave.

13. Lastly, there was no suggestion that the Claimant's position was declared redundant for him to qualify for severance pay, a benefit which accrues only in situations of redundancy.

14. The Claimant indeed admitted that he resigned and he did not draw the attention of the Court to any precedent that an employee who opts to resign is entitled to severance pay.

15. Before concluding, the Court wishes to observe that the pleadings demonstrated disputed facts which could only be unravelled by presentation and interrogation of evidence. The Claimant, for reasons best known to himself opted not to take that path.

16. The Court in effects orders that the Memorandum of Claim filed herein be dismissed with costs to the Respondent. It is so ordered.

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

Radido Stephen

Judge

Appearances

For Claimant Mr. Chege instructed by Munene Chege & Co. Advocates

For Respondent Mr. Ikua instructed by Ikua Mwangi & Co. Advocates

Court Assistant Nixon