

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 1420 OF 2013

CHRISTOPHER NDIVO KIMEU.....CLAIMANT

VERSUS

COLLINDALE SECURITY LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. This claim is brought by Christopher Ndivo Kimeu against his former employer, Collindale Security Limited. The claim is contained in a Memorandum of Claim dated 2nd September 2013 and filed in court on 4th September 2014. The Respondent's defence is contained in a Statement of Defence dated 17th October 2013 and filed in court on 23rd October 2013.

2. By consent of the parties, the matter proceeded by way of written submissions. Only the Claimant filed submissions.

The Claimant's Case

3. The Claimant was employed by the Respondent from 1st April 2000 until 8th March 2013, when he tendered his resignation. The Respondent acknowledged the Claimant's resignation on the same day and undertook to settle his final dues upon completion of clearance procedures.

4. The Respondent did not honour its word and on 15th March 2013, the Claimant's Advocates wrote a demand letter. In response, the Respondent wrote a letter dated 16th March 2016, confirming that the Claimant's dues had been prepared, ready for collection by the Claimant. The Claimant's Advocates wrote back on 20th May 2013, asking the Respondent to forward the dues through them. There was no response from the Respondent.

5. The Claimant now claims the following:

- a) Gratuity for 13 years.....Kshs. 97,273.80
- b) Uniform deposit refund.....4,500.00
- c) Days worked but not paid.....4,988.00
- d) House allowance.....1,000.00

The Respondent's Case

6. In its Statement of Defence dated 17th October 2013 and filed in court on 23rd October 2013, the Respondent admits having received and accepted the Claimant's resignation. The Respondent further admits informing the Claimant that his dues were ready for collection.

7. The Respondent states that the Claimant visited its offices but declined to accept the dues offered to him and instead instituted this suit.

8. Regarding the request by the Claimant's Advocates to forward the dues through them, the Respondent states that it was under no duty to do so, as the Claimant was required to pick the dues himself and sign the relevant clearance forms.

9. The Respondent admits owing the Claimant the sum of Kshs. 9,960, made up of Kshs. 4,500 on account of uniform deposit refund and Kshs. 4,500 and kshs. 5,460 for leave pay. The Respondent states that the Claimant was paid his salary up to 11th April 2013, being his last day of work. He is therefore not owed any money for days worked nor house allowance. The Respondent further states that since the Claimant had voluntarily resigned, he is not entitled to gratuity.

Findings and Determination

10. The single issue for determination in this case is whether the Claimant is entitled to the final dues set out in his Statement of Claim. These claims are in the nature of special damages, which must be specifically proved. The Claimant did not adduce any evidence in this regard and the Court therefore found no basis for the claims.

11. In the end, the Claimant is only entitled to uniform refund and leave pay as admitted by the Respondent.

12. Each party will bear their own costs.

13. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 13TH DAY OF OCTOBER 2017

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NDOLO

JUDGE

Appearance:

Mr. Wanyanga for the Claimant

Mr. Omare for the Respondent