



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 550 OF 2015

BETWEEN

STEPHEN MUSYIMI KIOKO.....CLAIMANT

VERSUS

KENYA SUGAR RESEARCH FOUNDATION.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Oruru Gisemba & Company Advocates for the Claimant

V.N.Okata & Company Advocates for the Respondent

JUDGMENT

1. The Claimant filed his Amended Statement of Claim on 16th May 2015. He states he was employed by the Respondent Parastatal, as a Security Guard in 2005, earning a monthly salary of Kshs. 9,009. Sometime in March 2014, his position was declared redundant. His Claim is that he was not paid redundancy benefits, among other benefits. He prays for Judgment against the Respondent for:-

- a) 1 month salary in lieu of notice at Kshs. 9,009.
- b) Annual leave over a period of 9 years at Kshs. 81,081.
- c) Overtime at Kshs. 485,518.
- d) Public holidays at Kshs. 21,621.
- e) Severance pay at Kshs. 40,540.
- f) House allowance over the period worked at Kshs. 145,945.

Total... Kshs. 784,716

Less Paid... Kshs. 37,460

Payable... Kshs. 747,256

g) Costs, interest and any other suitable relief.

2. The Respondent filed its Statement of Response on 17th December 2015. It is conceded the Claimant was employed by the Respondent, in the position, and on the date and at a salary indicated in the Statement of Claim. It is true his position was declared redundant, after the Respondent opted to outsource the role of security services. The Claimant was duly informed about this change. He was paid 1 month salary in lieu of notice. He took annual leave as shown in the annual leave schedule. He was absent on various dates as shown in the muster roll and does not merit overtime. Public Holidays were adequately compensated with annual leave and off duty days. He was registered under N.S.S.F and not eligible for severance pay. His rate of Kshs. 9,009 monthly included the housing element. He was paid all his dues totaling Kshs. 37,460, which he acknowledged as the full and final settlement. The Respondent prays for dismissal of the Claim.

3. It was agreed by the Parties on 18th July 2017, under the reference file Cause Number 547 of 2015 that documents and witness statements filed by the Parties are admitted as their evidence; and the dispute is considered on the strength of the pleadings, documents, witness statements and submissions. Parties confirmed the filing of submissions at the last mention on 20th September 2017. It was further agreed that all related files Cause Number 547 of 2015, 548 of 2015, 549 of 2015, and 550 of 2015- are dealt with simultaneously through this mode of disposal.

The Court Finds:-

4. The Claimant was employed by the Respondent as a Security Guard. It is common ground that he left in March 2014, after his position became redundant. The security services role was outsourced by the Respondent.

5. The Claimant does not question the validity of redundancy. The genuineness of the redundancy situation is not in question. He similarly does not dispute the fairness of procedure. There is no claim that redundancy was unfair. There is no prayer for compensation for unfair termination.

6. There is sufficient evidence to show the Claimant was paid Kshs. 37,462, comprising 1 month salary in lieu of notice, severance pay and annual leave days. These benefits were paid through and on the recommendation of the Labour Office Kisumu. The Claimant acknowledged the benefits payable to him by signing and thumb-printing the schedule of payment. There is no merit in his prayer for notice pay, severance pay and annual leave.

7. Severance pay however is regulated under Section 40 of the Employment Act. There is nothing about the N.S.S.F or other Social Security Plans under Section 40 of the Employment Act 2007. Severance pay is not limited by the fact that an Employee is registered with the N.S.S.F. Membership of the N.S.S.F does not deprive an Employee of severance pay under the redundancy law contained in Section 40 of the Employment Act. Both Parties in this dispute appear to have misapprehended the law on severance pay, equating it to service pay under Section 35 of the Employment Act. The N.S.S.F Statements exhibited before the Court are irrelevant under Section 40 of the Employment Act 2007. The prayer for severance pay however has no merit, as this is shown to have been paid, before the Claim was filed.

8. The Claimant did not work throughout to justify the prayer for overtime. There are no details of excess hours worked. The Ledger exhibited by the Respondent confirms the Claimant did not attend to duty consistently. He was paid a daily rate, which was all inclusive. He is not entitled to arrears of house allowance as prayed. Considering that he was absent from work on various days, it would not be reasonable to accede to his prayers for annual leave and public holiday pay, which he claims based on the entire period of service.

9. Lastly, the Court notes that the Claimant was granted the opportunity to ascertain the correctness of the tabulation of dues made upon recommendations of the Labour Office. He did so, signed and thumb-printed the schedule of payment. There was no dispute about the payable redundancy benefits at the time the Claimant signed and thumb-printed the schedule of payment. The prayers made in the Claim appear to be made in afterthought.

10. ***The Court is satisfied the Claim has no merit, and is dismissed with no order on the costs.***

Dated and delivered at Mombasa this 24th day of November 2017

James Rika

Judge