



REPUBLIC OF KENYA  
 IN THE INDUSTRIAL COURT AT MOMBASA  
 CAUSE NUMBER 298 OF 2015

**BETWEEN**

WILLIAM MUREKA OKINDA .....  
 CLAIMANT

**VERSUS**

SOUTHERN SHIPPING SERVICES LIMITED ..... RESPONDENT

*Rika J*

Court Assistant; Benjamin Kombe

*Ms. Samoita instructed by J.K. Mwarandu & Company Advocates for the Claimant*

*Ms. Opolo Advocate, instructed by the Federation of Kenya Employers [FKE] for the Respondent*

ISSUE IN DISPUTE: TERMINAL DUES AND DAMAGES

AWARD

[Rule 27 [1] [a] of the Industrial Court [Procedure] Rules 2010]

1. The Claimant filed his Statement of Claim, on the 6<sup>th</sup> May 2015. He states he was employed by the Respondent as an Electrician in 1993, on a basic monthly salary of Kshs. 21,556. He worked for 20 years after which he was retired on medical grounds. He claims he was not paid terminal dues. He seeks the following orders against the Respondent:-

- a. 1 month salary at Kshs. 21,556 x 20 years worked = Kshs. 431,120.
- b. 1 year’s annual leave pay at Kshs 21,556.
- c. 1 month salary in lieu of notice at Kshs. 21,556

Total..... Kshs. 474,252

d) General Damages.

e) Costs, Interest and any other suitable relief.

2. The Respondent filed its Statement of Response on the 24<sup>th</sup> July 2015. It is conceded the Claimant was employed by the Respondent as stated in the Claim. He however voluntarily resigned on 9<sup>th</sup> March 2013. The Respondent accepted his resignation in a letter to him dated 15<sup>th</sup> March 2013. He was paid his dues, and acknowledged payment, discharging the Respondent from further liability. He was issued his Certificate of Service. He utilized his annual leave entitlement partly, and was paid all outstanding leave days on resignation. He was subscribed to the N.S.S.F. and not entitled to additional social security payments. He is not entitled to notice pay.

3. The Claimant gave evidence, and closed his case, on the 14<sup>th</sup> October 2015. The Respondent called its Human Resource Manager Tobias Bob Omwai on the same date when hearing closed.

4. The Claimant restated the contents of his Pleadings in his evidence, acknowledging he retired voluntarily on the advice of his Doctor, after he fell ill with TB. He states he had been advised to either retire, or take 6 months' leave to recuperate. The Respondent's Manager told him he could not have the 6 months, and the Claimant therefore opted for retirement. He agreed he had utilized all his annual leave days, and dropped the claim for annual leave. He testified he was paid nothing on retirement.

5. Tobias Bob Omwai told the Court the Claimant was Respondent's Electrician. He tendered his letter of retirement on medical grounds. The Respondent accepted this. He did not ask for 6 months' sick leave. He was paid a gross of Kshs. 9,104 as terminal dues. He owed the Company money, and the net pay came to Kshs. 300. He acknowledged payment of the money paid to him, and discharged the Respondent from further claims. He was subscribed to the N.S.S.F. He was issued the Certificate of Service.

*The Court Finds:-*

6. The Claim has no merit. The Claimant left employment voluntarily, upon falling ill. He wrote to the Respondent on 9<sup>th</sup> March 2013 tendering his retirement. The Respondent accepted the Claimant's retirement, in the letter dated 15<sup>th</sup> March 2013. There was no evidence that the Claimant sought 6 months' sick leave from the Respondent, which the Respondent declined to grant to the Claimant. He was paid his dues, less what was owed to the Respondent. He signed the Final Settlement and Clearance Voucher, in which he states " *I do confirm the aforesaid sum is acceptable to me in full and final settlement...this amount is inclusive of all dues... I have no further claims...*"

7. It is not acceptable to the Court that the Claimant then makes a u-turn, and claims he was owed notice pay, annual leave pay, and unspecified sum of Kshs. 431,120. The latter is calculated at 1 month salary for every year in service. It is not specified what this sum represents. If it was intended to be service pay, it is not shown to the Court upon what the rate of 1 month salary for every year completed in service, is founded. The Claimant was furthermore, subscribed to the N.S.S.F, and not eligible to receive further social security benefit outside the Fund. The claim for annual leave pay was withdrawn in the Claimant's evidence. It was not explained to the Court why it was included in the Pleadings, and why the Claimant had to wait until the hearing to withdraw the claim. The Claimant initiated the termination of his contract of employment. He did not give the Respondent notice. The Respondent has not made any demand on him to pay for the notice. He should not be demanding notice pay from the Respondent. ***In all the Court finds the Claim to have no merit. It is dismissed with no order on the costs.***

**Dated and delivered at Mombasa this 18<sup>th</sup> day of March, 2016**

**James Rika**

**Judge**