



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAKURU
CAUSE NO. 458 OF 2014

PETER CHEGE MUTHUI.....CLAIMANT

v

MUCHEMI GITAHU KAGWA

GEORGE WANGIGI NDUGUTA

HELLEN WANJIRU MACHARIA

(sued as the Chairman, Secretary and Treasurer of

LESHAU KARAGOINI WATER PROJECT.....RESPONDENTS

JUDGMENT

1. Peter Chege Muthui (Claimant) was employed by Leshau Karagoini Water Project in August 1991 as a Manager and he was issued with a written contract.
2. On 7 October 2014, he commenced legal action against the Respondents seeking Kshs 77,000/- being unremitted National Social Security Fund contributions, Kshs 82,580/- on account of salary arrears and a declaration that he is entitled to wages during the period he was under suspension.
3. On 17 November 2014, the Cause was fixed for hearing on 30 June 2015. At the time, the Respondents had not filed any Response. An affidavit of service on record indicated that Notice of Summons had been served upon the Respondents on 29 October 2014.
4. The Respondents filed a joint Response on 30 June 2015. This was done without leave and when the Cause was called out for hearing, the Respondents legal representative did not even have the courtesy to disclose to Court that a Response had been filed, albeit without leave. He also did not seek leave to have the Response admitted out of time until 31 July 2015, at which point the Claimant's case had been closed. Nevertheless, the Court admitted the Response.
5. The Claimant testified and at the close of his testimony, the Court adjourned the hearing to 31 July 2015, to allow the parties an opportunity to settle the dispute out of Court.
6. No settlement was reached and the Respondents case was set for 8 December 2015, but the Respondents instead attempted to secure an adjournment, but the application was declined. The Respondents then opted to close their case without leading evidence.

7. Although the Claimant filed submissions on 18 January 2016 while the Respondents' submissions were filed on 18 February 2016.
8. The Court has considered the pleadings, testimony and submissions.
9. During testimony, the Claimant stated that there was change of management around 29 May 2013 and during the handover, the Respondents acknowledged that he was owed salary arrears of Kshs 82,580/- which he has not been paid up to date.
10. He also stated that he applied for annual leave on 25 September 2013 which was approved but the Respondents extended the leave through a letter dated 24 October 2013.
11. However, while he was preparing to resume duty, he was suspended through a letter dated 27 December 2013 until further notice but by the time of hearing, he had not received any further communication from the Respondents, even after his advocate wrote a letter dated 7 February 2014.
12. He stated that he was not accorded an opportunity to make any representations before he was suspended.
13. The Claimant in his testimony stated that he was not deducted contributions towards the National Social Security Fund, nor did the Respondents pay the employers share of the contributions.
14. He stated he was seeking wages from date of suspension and the other reliefs set out in the Memorandum of Claim.
15. The Claimant's testimony and documents remain unchallenged and uncontroverted despite cross examination. The effect being that there are no real disputes as to the facts.
16. The attempt by the Respondents to sneak in evidence/documents through submissions is regrettable and the Court declines to consider the same as it is a practice not known in law or practice.
17. The Court also rejects the undeveloped defence advanced by the Respondents on limitation, as the suspension was on 27 December 2013 and the claim was instituted on 7 October 2014, well within the 3 years allowed under section 90 of the Employment Act, 2007.
18. The Court therefore finds that the Claimant has proved on a balance of probabilities that he is entitled to the reliefs sought.

Conclusion and Orders

19. The Court finds and holds that the Claimant succeeds and awards him and orders the Respondents to pay him

a. Unremitted NSSF contributions	Kshs 77,000/-
b. Salary arrears	Kshs 82,580/-
TOTAL	Kshs 159, 580/-

20. Claimant to have costs of Kshs 30,000/-

Delivered, dated and signed in Nakuru on this 8th day of April 2016.

Radido Stephen

