



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1167 OF 2013

(Before Hon. Lady Justice Hellen S. Wasilwa on 25th October, 2016)

BOB MUI..... CLAIMANT

VERSUS

FIDELITY SECURITY LIMITEDRESPONDENT

JUDGMENT

1. The Claimant Bob Mui filed his Statement of Claim on 24th July 2013 through the firm of M/s Achach & Company Advocates. He claims that he was unfairly terminated by the Respondent.
2. The Respondents were served and filed their Response on 5.9.2013 through their Operations Manager one Okwanda S.M.
3. The case was then set down for hearing on 5.7.2016. The Claimant told Court that he was employed by the Respondent as a Guard in May 2005 at a gross salary of 8,297. He avers that he worked for Respondent upto February 2013, when he decided to resign after he fell sick and was denied sick leave.
4. The Respondents accepted his resignation but never paid his terminal dues. He avers that he was a member of NSSF but employer was not remitting his NSSF dues. He prays for his service pay from 2005 to 2013.
5. He told Court that the payslip on record from Respondent was never given to him but it was made after he left.
6. In their reply the Respondent state that the Claimant voluntary resigned and his last salary was 9,573/=. They also aver that the Claimant didn't give them one month's notice hence they are entitled to the 1 months' salary.
7. Having considered the submissions and evidence of Claimant and Respondent, I find that the Claimant voluntary resigned in February 2013 but didn't give the requisite notice.
8. The Claimant is however entitled to his leave days due but not taken for one month = 9,573/=.
9. But taken against his failure to give notice- that amount cancels with notice pay of 1 month for Respondents.

10. As to service pay, the Claimant having been a member of NSSF he is not entitled to payment of service pay as provided under Section 35 of Employment Act.

11. From the Statement of NSSF exhibited by Respondents, NSSF due from April 2012 to February 2013 was not remitted by Respondent. This is equivalent to $200 \times 11 = 2,200/=$. Plus costs of this suit. The rest of the claim is not tenable.

Read in open Court this 25th day of October, 2016.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Wanjuri Ngige holding brief for Achach for Claimant – Present

No appearance for Respondent