



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO 10 OF 2013
SHAMAS VELANI.....CLAIMANT
VS
RAKA MILK PROCESSORS LIMITED.....RESPONDENT

AWARD

Introduction

1. The Claimant's claim which is brought by way of a Memorandum of Claim dated 8th January 2013 and filed in Court on even date is for payment of outstanding dues. The Respondent filed a Reply on 21st February 2013 but made no appearance at the hearing despite the hearing date having been taken in Court by consent of the parties. The Court therefore proceeded to take the Claimant's case in the Respondent's absence. The Claimant testified on his own behalf and his Advocate filed written submissions.

The Claimant's Case

2. According to the Memorandum of Claim the Claimant was, by oral agreement, employed by the Respondent in the month of Augusts 2010 in the position of General Manager. The Claimant worked for the Respondent until 16th October 2012 when his employment was terminated. The Claimant's gross salary as at the time of leaving employment stood at Kshs. 277,703. The Claimant stated that during the entire period of his employment with the Respondent, he had not gone on leave and that he was not provided with a company car as per agreement.

3. By letter dated 23rd October 2012, the Respondent offered to settle the Claimant's claim in the following terms:

- a. Long term service dues.....Kshs. 347,662.80
- b. One month's salary in lieu of notice.....277,703.00
- c. Half month's salary for the month of October 2012.....138,851.50
- d. Outstanding transport expenses refund.....76,400.00

4. According to the Claimant, he was agreeable to the Respondent's proposal save for the following additions:

- a. Enhancement of the period of reasonable notice from 1 month to 3 months;
- b. Pay in lieu of 42 accrued leave days;
- c. Lump sum payment of the terminal dues.

5. The Claimant therefore claims the following:

- a) Kshs. 833,109 being the equivalent of 3 months' salary in lieu of notice;
- b) Kshs. 555,406 being the equivalent of 2 months' salary in lieu of leave;
- c) Service pay for every year worked;
- d) Kshs. 138,851.50 being the equivalent of half month's salary in October 2012;
- e) Kshs. 76,400 being transport costs.

The Respondent's Case

6. In its Reply to the Claimant's Memorandum of Claim, the Respondent denied the Claimant's claim for accrued leave stating that the Claimant had exhausted all his leave days by proceeding on leave and/or commutation thereof. The Respondent denied ever agreeing to settle the Claimant's claim as stated in the Claimant's Memorandum of Claim.

Findings and Determination

7. By its Reply to the Claimant's Memorandum of Claim, the Respondent attempted to repudiate its undertaking to pay the Claimant as per its letter dated 23rd October 2012. However, no reason was advanced for this change of course and the Court therefore treated this part of the claimant's claim as admitted by the Respondent and only addressed itself to the additional claims.

8. The Claimant cited the responsibilities attaching to the position he held as a basis for his claim for enhanced notice pay. Notice period is ordinarily provided for as a basic term in a contract of service. However, in cases where there is no express provision for notice period, the law provides for a one month's notice period.

9. Apart from a general statement on the responsibilities of his job, the Claimant did not advance any reason why his notice period should be enhanced from the statutory notice of one month to three months. This claim therefore fails and is dismissed.

10. With regard to the claim for leave, the Respondent did not provide any leave records in support of its claim that the Claimant had exhausted all his accrued leave as required under Sections 10 and 74 of the Employment Act, 2007. I therefore invoke Section 10(7) of the Employment Act and allow the Claimant's claim for leave pay.

11. In view of the fact that the Respondent had offered to pay the Claimant long term service dues in the sum of Kshs. 347,662.80 and that the Claimant was a contributing member of the National Social Security Fund (NSSF), the Court found no basis for the claim for service pay.

12. In the final analysis I make an award in favour of the Claimant in the following terms:

- a) Service dues.....Kshs. 347,662.80
- b) One month's salary in lieu of notice.....277,703.00
- c) Half month's salary in the month of October 2012.....138,851.50
- d) Outstanding transport expenses refund.....76,400.00

e) Pay in lieu of 42 days' accrued leave (277,703x42).....388,784.00

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Total.....Kshs.1,229,401

The Respondent will meet the costs of this case. This Award is subject to statutory deductions in accordance with Section 49(2) of the Employment Act, 2007.

Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 28TH DAY OF JANUARY 2014

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JUDGE

In the Presence of:

.....*Claimant*

.....*Respondent*