



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 226 OF 2013

[Formerly Cause No. 713 of 2011 at Nairobi]

GEORGE OBONYO.....CLAIMANT

-VERSUS-

TIMESALES LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 28th February, 2014)

JUDGMENT

The claimant filed the memorandum of claim on 9.05.2011 through M/S B.W. Mathenge & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. **An order that the respondent do pay to the claimant the sum of Kshs.115,552.00, the same being monies for house allowance and seniority allowance.**
- b. **Costs of the suit.**
- c. **Any other relief that the court may deem fit to grant.**

The respondent filed the memorandum of response on 20.09.2013 through Mr. A.O. Ambenge, the Senior Executive Officer of the Federation of Kenya Employers. The respondent prayed for judgment against the claimant for orders dismissing the suit with costs.

The case was heard on 2.12.2013 when the claimant gave evidence to support his case and the respondent opted to rely on the documents on record without calling a witness.

The respondent employed the claimant in June 1977 and the employment relationship culminated into employment as a carpenter grade III effective 30.06.1976 as per **exhibit C1** being the employment letter dated 29.06.1976.

The claimant retired from the respondent's employment with effect from 31.08.2009 as per **exhibit C2** being the retirement letter dated 10.08.2009. Upon retirement, the claimant was paid Kshs.325,691.00 per the payslip for September 2009, **exhibit C3** being the retirement package. The respondent did not inform the claimant the formula applied to arrive at the package.

The claimant's case was that he was to be paid a package of Kshs.396,198.00 as per *appendix 1* on the

memorandum of response being the respondent's own calculations.

Appendix 2 on the memorandum of claim is the final settlement the claimant signed acknowledging receipt of a cheque for Kshs.325,691.00 being full and final settlement from the respondent and that the claimant had no any other claim against the respondent.

The respondent urged that the claimant was entitled to Kshs.396,198.00 and upon taxation, to Kshs.325,691.00 that was paid to the claimant. The respondent further submitted that the claimant was bound by the final settlement he signed releasing the respondent from any liability.

The court has considered the pleadings, submissions and the evidence and finds that the claimant has not established the claims and prayers made in the memorandum of claim. The court further finds that the claimant is bound by the final settlement he signed. The court finds that the claimant has failed to establish the basis for the claim and prayer for house allowance and seniority allowance. Accordingly, the court finds that the claimant's case shall fail.

In conclusion, the claimant's memorandum of claim is dismissed with costs.

Signed, dated and delivered in court at **Nakuru** this **Friday, 28th February, 2014.**

BYRAM ONGAYA

JUDGE