



REPUBLIC OF KENYA
 IN THE INDUSTRIAL COURT AT NAIROBI
 CAUSE NUMBER 799 OF 2012

BETWEEN

JULIUS OKELLO.....
 CLAIMANT

VERSUS

PAYLESS CAR HIRE AND TOURS LIMITED..... RESPONDENT

Rika J

CC. Mr. Kidemi

Mrs. Gakoi instructed by Gakoi Maina & Company Advocates for the Claimant

No appearance for the Respondent

ISSUE IN DISPUTE: TERMINAL BENEFITS

AWARD

1. This Claim has no Response. The Respondent filed no Statement, and did not attend hearing, even after notification. The Statement of Claim was filed on 10th May 2012. The Claimant proceeded to give evidence ex parte on the 17th July 2013.
2. His position is that he was employed by the Respondent as an Accountant, starting the 6th April 1995. He worked up to 1st March 2009, when he resigned. The Respondent accepted his resignation, but failed to pay the Claimant his terminal dues which included-:
 - a. Salary for the month of February 2009 at Kshs. 63,412;
 - b. Pay for 37 days of annual leave;
 - c. Severance pay for 13 years worked at Kshs. 549,570

He claims these benefits; a declaration that termination was unlawful and untimely; and the costs of the Claim with interest.

The Court Finds and Awards-:

3. There is no ground to consider or grant the last prayer on the termination being unlawful and untimely. The Claimant opted to resign, and chose the moment of resignation. He cannot attribute the decision in any way to the Respondent.

4. There is no material to suggest he left employment on account of redundancy, and severance pay under section 40 of the Employment Act 2007, is unmerited. There is nothing on the record to doubt his prayers for pay for 37 days of annual leave and salary for February 2009. ***He is granted leave pay calculated at the rate of Kshs. 63,412 divided by 26 working days= Kshs. 2,438 x 37 days = Kshs. 90,240. The Salary for the month of February 2009 is granted at Kshs. 63,412, bringing his total Award to Kshs. 153,832.***

In sum-:

- a. ***The Claimant left employment of his own volition;***
- b. ***The Respondent shall pay to him 37 days of annual leave and salary for the month of February 2009 at Kshs. 153,832, within 30 days of the delivery of this Award; and***
- c. ***No order on the costs and interest.***

Dated and delivered at Nairobi this 14th day of February 2014

James Rika

Judge