



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 1064 OF 2010

BETWEEN

FREDRICK OWINO OGINGO..... CLAIMANT

VERSUS

**INSTARECT LIMITED
RESPONDENT**

Rika J

CC. Mr. Kidemi

Mr. Owaga instructed by Owaga & Associates, Advocates for the Claimant

Mr. Njiru Advocate instructed by the Federation of Kenya Employers for the Respondent

ISSUE IN DISPUTE: SEVERANCE PAY

AWARD

1. The Claimant brought this Claim against his former employer the Respondent herein, through a Statement of Claim filed on 17th September 2010. He seeks to be paid one month salary in lieu of notice at Kshs. 12,400, and severance at the rate of 15 days’ salary for every completed year of service amounting to Kshs. 78,691.80.
2. The Respondent filed a Statement of Reply on 28th June 2010. Its position is that the Parties held consultative meetings before the Labour Office before this Claim was filed. They agreed the Claimant be paid one month salary in lieu of notice, and be availed the certificate of service. He was paid Kshs. 16,508, and discharged the Respondent from further obligation. He is not entitled to further claims.
3. The Parties agreed on 30th August 2011 before Hon. Justice Stewart Madzayo [now Hon. Senator Stewart Madzayo], to have the matter disposed of by way of written submissions. The dispute was last mentioned on 31st July 2013 when the Parties confirmed the filing of their final submissions and were advised Award would be delivered on notice.
4. The Claimant states he was employed by the Respondent on 21st September 1998. It is not clear in what capacity. His contract was terminated on 16th April 2010 by the Respondent. This was done on

account of a redundancy situation that had arisen in the Respondent's business. The dispute went before the Labour Office, who recommended the Claimant be paid for notice, but failed to factor in severance pay. He worked for 11 years.

5. The Respondent does not deny that it employed the Claimant for the years between 1998 and 2010. It does not deny it made a decision to terminate the Claimant's contract of employment, and has not denied this was necessitated by an economic situation. The Respondent paid the Claimant his terminal dues, and he discharged the Respondent from further obligation.

The Court Finds and Awards:-

6. There is sufficiency of material on record to conclude the Claimant was employed by the Respondent on 21st September 1998 up to 16th April 2010. On 17th August 2009, the Respondent announced to its staff that it would carry out a retrenchment exercise at the end of the financial year in October 2009. The Claimant was among the affected employees and worked up to early 2010. He was paid a sum of Kshs. 16,508 only, comprising notice pay.

7. He was entitled to 15 days' salary for every completed year of service. This is an obligation imposed on the Respondent by Section 40 of the Employment Act 2007. It is an obligation that cannot be avoided by a discharge voucher, or an edict of the labour officer. It is unfortunate that after 11 years of service, an employee left service with only a sum of Kshs. 16,508- the equivalent of one month salary and a little money in addition. Where is his accrued reward and recognition, his investment through years of toil, in the employer's business?

8. The Court is persuaded the Claimant is entitled to severance pay at 15 days' salary for every year completed in service. He had done 11 complete years by September 2009. The Claimant's pay slips show he last earned the rate of Kshs. 12,400 per month. ***Severance pay is granted at Kshs. 12,400 divided by 26 days x 15 days x 11 years = Kshs. 78,692. The Respondent shall pay to the Claimant the sum of Kshs. 78,692 as severance pay. The full amount be paid within 30 days of the delivery of this Award. No order on the costs.***

Dated and delivered at Nairobi this 12th day of February 2014

James Rika

Judge