



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 444 OF 2013

JOSEPH MINDU KARARI MUTITIKA.....CLAIMANT

-VERSUS-

PARAG SHAH.....1ST RESPONDENT

**ELYSIAN LIFE SCIENCES (MAURITIUS) LIMITED.....2ND
RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 21st March, 2014)

JUDGMENT

The claimant filed the statement of claim on 23.12.2013 and prayed for judgment against the respondent for:

1. **One month's salary in lieu of notice.**
2. **Accrued leave pay as from 2011.**
3. **Severance pay for 2 years.**
4. **Damages for wrongful delayed salary and travelling expenses.**
5. **Cost of this suit.**
6. **Any other relief that this honourable court may deem fit to award.**

Despite service of the statement of claim and the summons, the respondents did not enter appearance or file a memorandum of defence.

The case was heard on 12.03.2014. Despite service of the hearing notice, the respondents did not attend court. The claimant gave evidence to support his case and testified as follows:

- a. By a contract dated 28.12.2011, the 2nd respondent employed the claimant to the position of supervising representative of the respondents in Kenya. The terms and conditions of service as well as the responsibilities of the claimant were set out in the contract being exhibit C1.
- b. The claimant delivered on his duties and was paid as agreed except that he was not paid the travelling allowance as expected. Travel allowances were not fully paid since the 1st month of his employment in January 2012.
- c. At the end of August 2013, the claimant's salary was not paid. Since then to the time of hearing of the suit, the claimant had been demanding for the payment of his salaries but there was no reply. The claimant, during that period, has continued to work and has rendered the necessary reports as required but without the payment of the agreed salary and benefits.

- d. The respondents are in the business of growing a crop known as **Artemisia Annua** whose extracts are used to manufacture certain malaria medicines and the crop is grown in a place called Rimuruti in Kenya. The claimant's evidence was that the business was performing profitably.
- e. By December 2013, the claimant had gone for 5 months without pay and he decided to file the suit.
- f. The 1st respondent is the chief executive officer of the 2nd respondent. The service of court papers in the case was effected at his known place of work and he visits Kenya frequently. The respondents have also engaged a Kenyan company called Botanical Extracts Limited which manages recruitment of farmers, manages the crop from planting to harvesting and delivers it for processing at the EPZ in Athi River. The claimant works in co-ordination with the managing company and which was also served because it is authorized by the respondents to deal with all management issues.
- g. The claimant submitted his computed dues as at February 2014 amounting to Kshs.2,097,220.00 as per exhibit C5.
- h. Despite submission of reports, the claimant testified that the respondents had failed to communicate to him and it was better for the court to declare that he is entitled to deem himself constructively terminated.

The court has considered the evidence on record and the pleadings. The court finds that the respondents have refused to communicate with the claimant despite the claimant's performance of his duties and submission of the relevant reports. In view of the respondents' conduct, the court finds that the claimant is entitled to consider himself constructively terminated. The court further finds that in absence of any defence on the part of the respondents and in view of the claimant's testimony, the court finds that the claimant is entitled to the prayers as urged.

In conclusion, judgment is entered for the claimant against the respondent for:

1. The respondents to jointly or severally pay the claimant **Kshs.2,097,220.00** being salary and other agreed benefits from August, 2013 to end February, 2014.
2. The claimant is at liberty to consider himself constructively terminated with effect from the end of February, 2014.
3. The respondents to pay costs of the suit fixed at Kshs.50,000.00.
4. The respondents to pay the dues in this judgment by 1.04.2014, in default, interest at court rates to be payable from the date of the judgment till full payment.

Signed, dated and delivered in court at **Nakuru** this **Friday, 21st March, 2014.**

BYRAM ONGAYA

JUDGE