

REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA
AT NAKURU
CAUSE NO. 144 OF 2013

[Formerly Cause No. 1239 of 2010 at Nairobi]

VINCENT OTIEMUT.....CLAIMANT

-VERSUS-

STEPHEN THUKU MUNGARA.....RESPONDENT

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

JUDGMENT

The claimant filed the memorandum of claims on 11.10.2010 through Gordon Ogola & Associates Limited. The claimant prayed for judgment against the respondent for Kshs.345,058.00 comprising prayers for payment for one month in lieu of termination notice; underpayments; annual leave for three years; gratuity; rest days and public holidays; costs and certificate of service.

On 25.03.2011, the claimant filed an application to substitute the respondent with his sons Terrovin Karanja Thuku and Paul Thuku Mungara on the grounds that the respondent had passed on and it was in the interest of justice that the respondent was substituted. The court record shows that the application was never fixed for hearing and therefore it has not been determined.

On 4.12.2013, the claimant filed a notice of change of advocate and appointed Ndeda & Associates to act for him in the place of his initial advocates.

The case was fixed for hearing on 17.03.2014. Counsel for the claimant attended court who informed the court that the claimant had served the relevant hearing notice and no response was on record. She further told the court that she did not intent to call any further evidence than as had been filed. She stated that there was no defence on record and she prayed for judgment.

The affidavit of service filed on 14.03.2014 shows that the respondent's sons were served with the hearing notice but without any substitution orders making them parties to the suit. It is obvious that any adverse orders that the court may make in this case against the respondent would be in breach of the rules of natural justice.

In the circumstances, the memorandum of claim is dismissed with orders that the claimant will bear own costs of the suit.

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

BYRAM ONGAYA

JUDGE