

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT KISUMU

CAUSE NO. 241/2013

(Before Hon. Justice Hellen Wasilwa on 30th April, 2014)

GEORGE OCHIENG NYANG'INJA CLAIMANT

-VERSUS-

VYATU COMPANY LIMITED RESPONDENTS

JUDGMENT

The claimant herein George Ochieng Nyang'inja filed his memo of claim on 23.8.2013 in person seeking payment of his terminal dues and leave allowance.

It is the claimant's case that he was employed by the respondents sister company Pride Enterprises in 1990. In 1996 January he was transferred to Vyatu Limited where he continued until 3.4.2012. On this day, he wrote a letter asking to be allowed to proceed on retirement. He also asked the respondents to pay him his terminal dues. The respondents never paid those dues and that is what the claimant seeks before this court. In cross examination by counsel for the respondents, the claimant told court that he was respondents driver and at retirement he was earning Ksh 17,000/= per month. He told court that his employer used to remit NSSF dues all the time he worked. He also admitted that his wife took Ksh 26,000/= from this employer as a loan and she never paid it since 2006. He told court further that he was paid leave allowance except one of June.

The respondents on the other hand filed their memo of appearance through the firm of L. G. Menezes Advocates on 2.10.2013. They never filed any defence. They however called one witness who told court that the claimant left the company in 2012 and paid all his dues. They also stated that there are no more dues to pay as the claimant had his dues remitted to NSSF. They are only willing to pay him leave allowance for 2012 less what he owes them Ksh 26,000 which his wife took. That infact, it is claimant who owes them Ksh 12,649/=.

Having considered the evidence of both parties, it is apparent that indeed the claimant's NSSF dues were remitted by the company. Under Section 35 (6) of Employment Act payment of gratuity will not count where the employee is a member of the National Social Security Fund. The claimant having admitted that his NSSF dues were actually paid by the respondent, it follows that he is not entitled to what remedies he had sought. I therefore find so and dismiss his case accordingly.

Since there is no counter-claim sought by the respondents, even what is admitted as being owed, his not awarded. Each party will bear it's own costs.

HELLEN WASILWA

JUDGE

30/4/2014

Appearances:-

Claimant in person present

L. G. Menezes for respondents present

CC. Wamache