



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT MOMBASA

CAUSE NO. 362 OF 2013

JOHANA MARTIN MARITIMCLAIMANT

VERSUS

LOCHAB BROTHERS LTDRESPONDENT

J U D G M E N T

INTRODUCTION

This is a suit by the claimant suing the respondent for salary arrears and accrued leave. The claimant also prays for any other relief which the court may deem fit to order. The respondent did not file any defence and as such the suit proceeded ex parte on 19/2/2014.

CLAIMANTS' CASE

The claimant contended that he was employed by the respondent in February 2012 as Operations manager Mombasa at a gross salary of ksh.48000 including ksh.35000 basic salary and ksh.13000 house allowance. That from June 2013 the respondent stopped paying his salary and the default continued until October 2013 when he decided to bring this suit with the advice of the labour office.

His request for pay from the General Manager Mombasa Mr. Kulavi did not yield any fruit because he maintained that only the MD Mr. Ranjit could sort out the claimant's salary issue because of his rank as the Operations Manager.

The claimant's effort to raise the matter with the MD was futile because all his emails and SMS's correspondences went unanswered. The claimant produced letters dated 11/11/2012, 1/8/2013 and 8/10/12 as exhibit 1,2, and 3 respectively to prove his employment relationship with the respondent. As at the time the matter came for hearing in February 2014, he had not yet received his salary and he prayed for an order that his salary be paid up to February 2014. He also prayed for leave for the period of service. After the close of hearing the claimant's counsel filed written submissions.

ANALYSIS AND DETERMINATION

The issues arising from the pleadings, evidence and submissions are

- a. **whether the claimant is still in the respondent's employment**
- b. **whether the relief sought is due.**

Employment Relationship

The claim herein is about the failure of an employer to pay salary to his employee for now over 9 months. The court finds the said conduct by the employer not only amounting to fundamental breach of contract but also a criminal offence under Section 17 of the employment Act 2007. It is also amounting to constructive unfair termination of employment by the respondent. The court therefore finds and holds that the claimants employment no longer persists in view of the foregoing observations and treats the said termination to have been sealed.

Reliefs Ordered

The claimant is awarded the prayer for accrued salary at the rate of ksh.48000 per month from June 2013 to October 2013 as prayed being ksh.240,000. As requested in evidence and submissions the court grants further reliefs as prayed in prayer 2 and 3 of the claim. In that respect the court awards salary upto the date of this judgment being ksh.48000x6= 288,000. The claimant will also get 6 months gross salary for unfair termination of his employment being ksh.288000. The court also awards the claimant one month salary in lieu of notice being ksh.48000. Lastly, the claimant will get pay in lieu of leave for 2012-2014 being ksh.96000. The reason for the two year period is because the court has treated the effective date of termination as the date of this judgment.

DISPOSITION

The judgment is entered for the claimant and against the respondent for the payment of ksh.960,000/ for wrongful and unfair constructive termination of employment. The claimant will also have costs and interest from the date hereof.

Dated Signed and delivered this 25th day of April 2014.

O.N. Makau

Judge