



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA**

**AT MOMBASA**

**CAUSE NO. 156 OF 2013**

**GEORGE OKOTH OWUOR .....CLAIMANT**

**VERSUS**

**PARLIAMENTARY SERVICE COMMISSION .....1<sup>ST</sup> RESPONDENT**

**MABRUK J. MPONDA (*immediate former changamwe***

***constituency officer manager*)..... 2<sup>ND</sup> RESPONDENT**

**HON. RAMADHAN SEIF KAJEMBE ..... 3<sup>RD</sup> RESPONDENT**

**J U D G M E N T**

**INTRODUCTION**

The claimant has sued the respondents claiming ksh.413,750 being salary arrears, pay in lieu of leave and gratuity. The second respondent did not file any defence but the 1<sup>st</sup> and 3<sup>rd</sup> respondents did. Before the suit was heard the claim for gratuity was settled and the parties agreed to have the issue for salary arrears and leave determined by the court after hearing evidence.

The case was heard *ex parte* on 9/6/2014 after all the respondents failed to attend court. The claimant testified as CW1.

**CLAIMANT'S CASE**

CW1 told the court that he was employed vide contract dated 1/7/2008 signed between him and the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. He was employed as a security guard for the Changamwe constituency office. His salary was Ksh.12500 per month. His salary was paid through the 2<sup>nd</sup> respondent.

On 5/12/2011, the second respondent suspended CW1 from work for 10 months. During the suspension period CW1 was receiving half his salary being ksh.6500 per month. When he resumed in November 2012, he was not paid his salary arrears for the period of suspension as promised by the 2<sup>nd</sup> respondents.

In January 2013, the parliament was dissolved and consequently his contract of employment lapsed. He was never paid the salary arrears for the suspension period being ksh.6000 per month plus the salary for the last two months of the contract namely December 2012 and January 2013. In addition CW1 contended that during his 5 years service he never went for his leave. He prayed for pay in lieu of leave.

After the close of the hearing, the claimant and the 1<sup>st</sup> and 3<sup>rd</sup> respondents filed written submissions.

### **ANALYSIS AND DETERMINATION**

The court has carefully perused and considered the pleadings, evidence and the submissions filed by the parties. The only issue for determination is whether the claimant is entitled to payment of salary arrears and cash in lieu of leave days not utilized.

It is obvious that the claimants evidence on said two prayers has not been contested by the defence. The defence did not produce any evidence to prove that CW1 was paid all his salary and that he utilized all his leave days. Under Section 74, the employer is duty bound to keep all employment records obviously for use in disputing or disproving any claims by their employees. In this case, the employer was the 3<sup>rd</sup> respondent with the authority from the 1<sup>st</sup> respondent who was to provide all the funds for paying the claimants salary and terminal benefits.

The foregoing observation was confirmed by the 1<sup>st</sup> respondent's admission to pay the service gratuities directly to the claimant. The 2<sup>nd</sup> respondent was the agent for the 1<sup>st</sup> and 3<sup>rd</sup> respondents at the constituency office for purposes of paying the claimant all his dues and also for giving him leave when it fell due. The 1<sup>st</sup> and 3<sup>rd</sup> respondents have not proved in this case, that they gave the 2<sup>nd</sup> respondent all the money to pay salary to the claimant. The 2<sup>nd</sup> respondent has in turn not proved that he indeed paid the claimant all his due salary including the arrears for the period he was under suspension plus the period of 2 months after resuming duty in November 2012.

Consequently, claimant is awarded ksh.6000 per months between 5/12/2011 and November 2012. That adds up to ksh.60,000. He also get ksh.25,000 being salary for 2 month upto January 2013. In addition he will get cash in lieu of leave at the rate of 21 days per year for the period between 1/7/2008 and January 2013. That is about  $4.5 \text{ years} \times 21 \div 30 \times 12500 = 39375$ .

### **DISPOSITION**

For the reasons aforestated, judgment is entered for the claimant against the respondent jointly and severally for ksh.124,375 plus costs and interest.

The claimant will also be issued with a certificate of service.

Orders accordingly.

**Dated, Signed and delivered this 25<sup>th</sup> July 2014.**

**O. N. Makau**

**Judge**