



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO 1852 OF 2011

JUSTUS MACHARIA KINYUA.....CLAIMANT

VS

TEULE KENYA.....RESPONDENT

AWARD

Introduction

1. By a memorandum of claim dated 1st November 2011 and filed in Court on even date, the Claimant sued the Respondent for failure to pay his terminal benefits. The Respondent did not file any reply to the Claimant's claim.

The Claimant's Case

2. The simple facts of this case are that the Claimant was employed by the Respondent as its Executive Director effective January 2010 at a monthly gross salary of Kshs. 100,000.
3. On 14th April 2010, the Claimant wrote to the Respondent, tendering his resignation with immediate effect. The Claimant offered to forfeit his April 2010 salary together with earned leave days in lieu of notice.
4. In his resignation letter, the Claimant asked the Respondent to compute his terminal benefits plus his unpaid salaries for January, February and March 2010 which the Respondent failed to do prompting the Claimant to seek legal redress.

Findings and Determination

5. The Claimant claims the sum of Kshs. 300,000. According to his contract of service, the Claimant's employment took effect on 4th January 2010 while the certificate of service gives 1st January 2010 as the effective date. Further, the Claimant's letter of resignation dated 14th April 2010 indicates that the resignation took effect immediately while the certificate of service gives the Claimant's last day of work as 16th April, 2010.
6. The Employment Act, 2007 provides that the employer is the custodian of employee records and

the Court has therefore adopted the dates regarding the Claimant's employment as given in the certificate of service. This would mean that the Claimant worked for the Respondent from 1st January to 16th April 2010.

7. The Claimant's contract of service at Clause 9.1.2 required him to give three months' termination notice or in the alternative to forfeit one month's pay in lieu of notice. In his letter of resignation, the Claimant offered to forfeit his April 2010 salary together with earned leave days. Since the Claimant worked for three and half months, his prorata leave would be five days. Adding this to the 16 days worked in April 2010 would leave a notice deficit of nine days.

8. The Respondent has not contested the Claimant's claim for unpaid salaries and the Court therefore makes an award in favour of the Claimant as follows:

a) Salary for January, February and March 2010.....Kshs. 300,000

b) Less 9 days notice shortfall (100,000/30x9).....Kshs. (30,000)

Amount due.....Kshs. 270,000

9. The Respondent will meet the costs of this case. The award amount will attract interest at court rates from the date of the award until payment in full.

Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 21ST DAY OF JULY 2014

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JUDGE

Appearance:

Mr. Chigiti for the Claimant

No appearance for the Respondent