



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

**AT NAIROBI**

**CAUSE NO. 679B OF 2014**

**AYANNA YONEMURA.....CLAIMANT**

**VERSUS**

**LIWA KENYA TRUST.....RESPONDENT**

Mrs Bukachi with Mr. Shijenje for Claimant

**JUDGMENT**

1. The Claimant seeks payment of:
  - i. unpaid salary for January 2014 in the sum of Kshs.170,000/=; and
  - ii. unpaid house allowance for three months at the rate of 15% of the gross salary in the sum of Kshs.76,500/=;
  - iii. issuance of certificate of service; and
  - iv. costs of the suit.

The statement of claim dated 25<sup>th</sup> April, 2014 was filed on 25<sup>th</sup> April, 2014.

2. The Respondent filed a memorandum of reply dated 16<sup>th</sup> May 2014 in which it admits employing the Claimant pursuant to a letter of appointment dated 27<sup>th</sup> September 2013 in the position of Executive Director of the Respondent for a period of three months effective 1<sup>st</sup> November, 2003 to 31<sup>st</sup> January, 2014.

3. This matter was set for hearing on 25<sup>th</sup> June 2014 and the Respondent was served with a hearing notice and a return of service deposed to by a process server. The Respondent defaulted to attend the hearing. According to the Affidavit of service, the Advocates for the Respondent on record Messrs A. G. N. Kamau Advocates were served with the hearing notice on 20<sup>th</sup> June, 2014 at New Rehema House, 2<sup>nd</sup> floor, Rhapta Road at 10.20 a.m.

A copy of the hearing notice bearing the stamp and signature of the Advocates for the Respondent was attached to the Affidavit of service by the process server Isaac Makhino Wafula.

4. The Court was satisfied that the Respondent was properly served with the hearing notice and were in default of attendance and proceeded to hear the matter exparte.
5. The key performance indicators for the Claimant were pursuing, developing and coordinating;

- i. memberships subscriptions from educational institutions, industry stakeholders and government agencies;
- ii. donations and grants from donor agencies;
- iii. partnerships with organisations and companies with which LIWA KENYA TRUST has common goals;
- iv. institutional building of LIWA Kenya Trust;

The Claimant told the Court that she performed these responsibilities with distinction.

6. The Respondent in its reply avers that the Claimant did not do her work diligently and denies owing her the salary for the month of January or at all.

The Respondent did not produce any documentary evidence indicating that it had paid the Claimant's salary.

7. The Court notes that the Statement of the Response filed by the Respondent amounts to a bare denial of the claim by the Claimant especially because no evidence of payment of the salary for the month ending 31<sup>st</sup> January 2014 was presented to the Court.

8. The Claimant has testified in support of her case. The Claimant has on a balance of probability proved that she was employed by the Respondent on a three months contract and was not paid her last salary for the month of January 2014 in the sum of Kshs.170,000/=.

### The law

9. **Section 31(1)** of the *Employment Act* provides that an employer shall in lieu of provision of housing **“pay to the employee such sufficient sum, as rent, in addition to the wages or salary of the employee, as will enable the employee to obtain reasonable accommodation.”** However in terms of **subsection 31(2)** this provision shall not apply to an employee whose contract of service

**“(a) contains a provision which consolidates as part of the basic wage or salary of the employee, an element intended to be used by the employee as rent or which is otherwise intended to enable the employee to provide himself with housing accommodation;”**

The term Gross salary is not defined in the *Employment Act, 2007* though used in various sections.

The Act defines remuneration as;

**“the total value of all payments in money or in kind, made or owing to an employee arising from the employment of that employee;”**

However, the Concise Oxford English Dictionary 12<sup>th</sup> Edition defines gross as follows:

**“often contrasted with net without tax or other contributions having been deducted.”**

10. For an employer to exclude provision of housing or payment of rent to the employee, it is imperative that the contract of service specifically provides that the salary paid is a **“consolidated”** salary.

The term gross is not the same as **“consolidated”** from the definition above. The same dictionary defines the term ‘consolidate’ as follows:

**“combined into a single unit.”**

11. A reading of **Clause 1** of the contract titled Remuneration only provides for a gross salary of

Kshs.170,000/= per month which is **“inclusive of a car allowance of Kshs.10,500/= per month.”**

12. If it was the intention of the Respondent to include provision for housing in that remuneration, it would have stated so expressly in the contract.

It is therefore the Court’s conclusion that the Respondent did not provide housing or pay rent or housing allowance for its Managing Director and the Court awards the Claimant the amount claimed calculated at 15% as provided in the General Wages order which requires that housing component comprise at least 15% of the basic wage.

13. In the final analysis the Court awards the Claimant as against the Respondent;

- i. Kshs.170,000/= being unpaid salary for the month of January 2014;
- ii. Kshs.76,500/= being housing allowance calculated at 15% of the monthly salary;

**Total ward Kshs. 246,500/=;**

- iii. interest on (i) and (ii) at Court rates from date of this Judgment to payment in full;
- iv. Respondent to pay costs of the suit;
- v. the Respondent to provide the Claimant with a certificate of service within 14 days from the date of this Judgment.

**Dated and Delivered at Nairobi this 18<sup>th</sup> day of July, 2014**

**MATHEWS N. NDUMA**

**PRINCIPAL JUDGE**