

REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA
AT NAIROBI

CAUSE NO. 2124 'A' OF 2012

FREDRICK MULI MATIVO.....CLAIMANT

VERSUS

CITY COUNCIL OF NAIROBI.....RESPONDENT

JUDGMENT

1. The Claimant filed this suit against the Respondent on 19th October 2012. He averred in the Claim that there is no other suit instituted, pending and/or concluded before any other Court touching on the same subject matter with respect to this Claim between the parties herein. He sought a declaration that he was entitled to the payment of the accumulated 609 off days, an order for payment of the Claimant's dues as particularized in the Claim and an order for the Respondent to pay the costs of the suit plus interest thereon.
2. The Respondent filed a Reply to Memorandum in which all the Claimant's averments on his dues were denied and the Claimant put to strict proof thereof. Only jurisdiction and the plea that there was no other suit between the parties and the description of parties and the period of service were admitted.
3. The Claimant testified on 31st January 2013. He reiterated that he was not permitted to go on his off days which accumulated to 609 days by the time he was to retire. He also sought payment of 1205 off days Kshs. 612,102, difference on underpayment 60 off duty days Kshs. 30,478, 13 months and 15 days basic Kshs. 143,438, house allowance for 13.5 months Kshs. 40,500, annual leave allowance for 2 years Kshs. 30,400 and transport allowance all making a total of 1,601,484/-.
4. The Respondent called the Acting Human Resource Manager Duncan Odoyo Oyugi. He testified that the Claimant was given a notice of retirement on 1st May 2004 and was required to leave after the 6 month notice of compulsory retirement. On retirement the Claimant was paid all his dues. He was paid 60 days as the accumulated leave was not due and the payment was made on 13th June 2007.
5. The parties filed their submissions and in the Written submissions the Claimant reiterated that he was entitled to the payment sought for the 609 days. The Respondent in its Written Submissions submitted that the Claimant had not adduced any evidence in support of his claim for the 609 days. The Respondent also submitted that the Claimant had not proved his case on a balance of probability.
6. The Claimant failed to prove the 609 days he claims to have acquired as off days. He was paid all his terminal dues according to the evidence adduced. In regard to his prayers in paragraph 6 of his claim he seeks payment of 1,205 days plus an underpayment for 60 days as well as leave days accumulated and house allowance and salary underpayments. There was no evidence adduced showing how these claims arose and that the Respondent is liable. The Claimant failed to discharge the burden of proof which is an onus placed upon him. The suit would thus fall for dismissal.
7. The Claim is one brought without candour. The Claimant failed to reveal to Court that there was a suit before the Court which was apparently determined in favour of the Claimant being Cause No. 518 of 2010.

8. In the premises the order that commends itself for me to make is one dismissing the Claim with costs to the Respondent.

Orders accordingly.

Dated and delivered at Nairobi this 2nd day of July 2014

Nzioki wa Makau

JUDGE