



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**  
**CAUSE NO 134 OF 2013**

**BONIFACE MUTHUI MUTHEI.....CLAIMANT**

**VS**

**ROOFTECH K. LIMITED.....RESPONDENT**

**AWARD**

**Introduction**

1. The Claimant's claim brought by way of Memorandum of Claim dated 30<sup>th</sup> January and filed in Court on 31<sup>st</sup> January 2013 seeks payment of terminal dues. The Respondent filed a Statement of Response on 28<sup>th</sup> February 2013 and the matter proceeded on 21<sup>st</sup> March 2013. The Claimant testified on his own behalf and the Respondent called its Accountant, Samson Ngati. Both parties filed written submissions.

**The Claimant's Case**

2. The Claimant was employed by the Respondent as a technician in the year 1989. On 13<sup>th</sup> November 2009, he wrote to the Respondent requesting to retire effective 1<sup>st</sup> February 2010. The Respondent accepted the Claimant's resignation but requested him to stay in employment for six months to enable the Respondent to organise its staffing and sort out the issue of the Claimant's benefits. The Respondent did not however pay the Claimant his terminal benefits. The Respondent had also failed to remit the Claimant's National Hospital Insurance Fund (NHIF) and National Social Security Fund (NSSF) contributions.

3. The Claimant therefore claims the following:

- a. A declaration that the Respondent's failure to pay his benefits and to remit his statutory contributions was unlawful;
- b. An order that the Respondent pays the Claimant's service benefits being Kshs. 2,017,440;
- c. An order that the Respondent remits all NSSF and NHIF contributions to the respective organisations;
- d. An order that the Respondent pays the costs of this suit.

**The Respondent's Case**

4. In its Statement of Response filed on 28<sup>th</sup> February 2013, the Respondent admits having employed the Claimant as a technician, effective 17<sup>th</sup> May 1989 up to the Claimant's voluntary retirement on 30<sup>th</sup> August 2010. Upon the Claimant's retirement, the Respondent computed his final dues at Kshs. 22,243 which the Claimant refused to collect. The Respondent further states that all the Claimant's statutory contributions had been duly made to NHIF and NSSF. According to the Respondent, the Claimant is only entitled to Kshs. 22,243 being outstanding salary arrears.

### **Findings and Determination**

5. The issues for determination in this case are as follows:

a) Whether the Claimant is entitled to service benefits;

b) Whether the Respondent made remittances to the Claimant's NSSF and NHIF accounts as required by law.

### **Service Benefits**

6. The Claimant claims service benefits in the sum of Kshs. 2,017,440. Since the Claimant makes no reference to any specific provision in his terms and conditions of employment to support this claim, the Court has arrived at the conclusion that the claim is made under Section 35(5) of the Employment Act, 2007. It is however common cause that the Claimant was a member of NSSF and was therefore excluded from the purview of Section 35(5) by dint of Section 35(6) of the Act. Consequently, this claim has no basis in law and is dismissed.

### **Statutory Deductions**

7. The Claimant claims that the Respondent did not submit all his contributions to NSSF and NHIF while the Respondent contends that all contributions were duly made to the respective statutory bodies. Statutory contributions are evidenced by statements issued by these bodies and I therefore direct the Respondent to obtain and remit to this Court updated statements on account of all contributions made on behalf of the Claimant within the next thirty (30) days from the date of this ruling. The Respondent is further directed to pay the admitted amount of Kshs. 22,243 to the Claimant within the same period of time.

8. Each party will bear their own costs.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 8<sup>TH</sup> DAY OF JULY 2014**

**LINNET NDOLO**

**JUDGE**

### **Appearance:**

Mr. Mutahi for the Claimant

Ms. Njoki Gachihi for the Respondent