



**IN THE INDUSTRIAL COURT OF KENYA AT NAKURU**

**CAUSE NO. 10 OF 2014**

**ANTONY TENDWA SHIBAYILO.....CLAIMANT**

**-VERSUS-**

**CARZAN FLOWERS LIMITED..... RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 17<sup>th</sup> October, 2014)

**JUDGMENT**

The claimant filed the memorandum of claim on 20.01.2014 through Lawrence Mwangi & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. A declaration that the claimant is entitled to be paid his monthly dues for twelve (12) years as per the terms and conditions of his employment.
- b. Costs of the suit.
- c. Interest at court rates on (a) and (b) at 14% from the date of filing the suit till payment in full.
- d. Any other relief the honourable court deems fit to grant to avoid miscarriage of justice.

The memorandum of response was filed on 6.03.2014 through Murimi, Ndumia, Mbago & Muchela Advocates. The respondent prayed that the suit be dismissed with costs.

The claimant was employed by the respondent as a general worker on 1.10.1999 and later as a guard effective sometime in 2003. The claimant testified that he resigned from employment on 16.08.2012. The claimant further testified that after resigning the respondent asked him to work for a further 60 days pending calculation of his final dues for his 12 years' service. The claimant testified that on 19.09.2012 his supervisor one Philip Langat asked the claimant to stop working and to wait for communication on his final dues. The claimant testified that he waited for the communication which never came. He decided to file the suit demanding 12 months pay at the rate of his last monthly pay of Kshs. 5, 965.00.

The respondent's evidence was that on 19.09.2012 at about 1825 hours, there was electrical failure at the respondent's farm. In the course of inspection, the claimant was found attempting to steal two round cedar posts. The respondent's evidence was that the claimant decided to run away to escape arrest and criminal proceedings in that regard. The next time the respondent encountered the claimant was in the present court proceedings.

The issue for determination is whether the claimant is entitled to the prayers made in the memorandum of claim. The claimant has admitted that he resigned on 16.08.2012. The court has perused the contract of appointment dated 13.03.2003 and finds that there is no contractual provision that entitled the claimant to a monthly pay for every year served following the resignation. The court finds that the prayer was misconceived.

In conclusion, judgment is entered for the respondent against the claimant with orders that the memorandum of claim is dismissed with costs.

**Signed, dated and delivered in court at Nakuru this Friday, 17<sup>th</sup> October, 2014.**

**BYRAM ONGAYA**

**JUDGE**