



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT MOMBASA

CAUSE NO. 223 OF 2014

BRIAN M. LEWELACLAIMANT

VERSUS

1. BOOLMAT E.A CO. LTD
2. HABO GROUP OF COMPANIESRESPONDENTS

J U D G M E N T

INTRODUCTION

1) The claimant has brought this suit against the respondent seeking accrued salary and compensation for off days worked all totalling to ksh.523,333.40. The respondents did not file any defence although they appointed a counsel in the suit on 9/7/2014. The suit was heard on 15/7/2014 when the claimant testified as CW1.

CLAIMANTS CASE

2) CW1 told the court that he was employed by the respondents on 4/4/2013 as the General Manager for Mamba Village. He was issued with an appointment letter dated 23/4/2013 which he produced as exhibit 1.

He was entitled to a salary of Kshs. 100,000 per month under the employment contract, but CW1 was never paid anything between April and 17/8/2013 when he terminated the employment contract by a resignation letter (Exh.2) being 7 days notice because he was still on probation. CW1 was given the payslips for the said period but nothing was credited to his bank account as salary (exh 3 1,b,c,and d).

3) He prayed for ksh.456,666.70 as his salary arrears. He further prayed for ksh.66,666.70 as compensation for 20 off days worked. According to him, the off days were to be accumulated for compensation during the off season between the month of September and October.

In total CW1 prayed for ksh.523,333.40 plus costs and interest.

ANALYSIS AND DETERMINATION.

4) The issue arising for determination from the pleadings, evidence and the submission filed is whether CW1 is entitled to the relief sought.

It is not disputed that CW1 was employed by the respondent vide a contract of employment dated 23/4/2013 (exh. 1). It is also not disputed that CW1 was entitled to a monthly salary of ksh.100,000 per month and that he worked continuously between 4/4/2013 and 17/8/2013 when he resigned. It has also not been denied that CW1 was never paid his salary during his employment period.

5) Under Section 17(1) an employer is bound to pay his employee the entire salary when it falls due as per subsection (1). Under Section 18(2) (c) salary for an employee employed for a month becomes due at the end of each month. Consequently the court grants the prayer for salary arrears as prayed being kshs.456,666.70 for the period between 4/4/2013 and 17/8/2013.

6) Though the prayer for pay in lieu of the accrued off days is not contested, the claimant has neither pleaded the particulars of the off days he worked nor has he strictly proved the sum prayed for. It is cardinal principle of civil procedure that special damages must not only be pleaded but must also be strictly proved. In that regard, the prayer for ksh.66,660.70 for off days worked is dismissed.

DISPOSITION

7) For the reason stated above, judgment is hereby entered for the claimant against the respondents jointly and severally for ksh.456,666.70 plus costs and interest.

Orders accordingly.

Dated, Signed and delivered this 10th October 2014.

O. N. Makau

Judge