

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT NYERI

CAUSE NO.8 OF 2013

JOHN IRUNGU MWANGI.....CLAIMANT

-VERSUS-

IREMBU FARMERS CO-OPERATIVE SOCIETY LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 19th December, 2014)

JUDGMENT

The claimant filed the statement of claim on 8.02.2013 through J.N. Mbutia & Company Advocates. The claimant prayed for an award of Kshs. 564, 794 with interest from 10.10.2012 until payment in full, the costs of the claim, and interest.

The respondent filed the statement of defence on 18.03.2013 through Kimwere Josphat & Company Advocates. The respondent prayed that the claim be dismissed with costs. The respondent further pleaded for a set off of Kshs. 584,821.40 against any amount awarded to the claimant.

The claimant's evidence was that he was employed by the respondent as a secretary-manager effective 24.07.2006. He worked until 1.07.2011 when he was terminated on account of desertion from duty and misappropriation of respondent's funds.

The claimant's union intervened and demanded payment of the claimant's terminal dues of Kshs. 564, 794.00 as computed by the union. The claimant testified that the respondent agreed to pay him the sum in four instalments as per the agreement exhibit C1 being an agreement between the parties concluded at the Ministry of Labour and Human Resource Development, Murang'a District in presence of Joseph Chigiti Rungu (CW2), the District Labour Inspector. CW2 confirmed that he was the conciliator in the dispute; the parties discussed, and voluntarily signed the agreement. The agreement was that the claimant be paid Kshs. 564, 794.00 in four instalments of Kshs. 141,198.50 per year effective April 2012. CW2 confirmed that he drafted the agreement and the original was given to the respondent, the employer.

The court has considered the pleadings, the evidence and the submissions. All witnesses including the respondent's witness Salome Wanjiru Ngugi (RW), the respondent's secretary-manager confirmed that the parties signed the agreement with the respondent's chairman signing for the respondent. The court finds that the claimant is therefore entitled to the Kshs. 564, 794.00 as prayed for. The agreement was concluded after the termination and as the amicable resolution to the matters relating to the termination. In the opinion of the court, the respondent's claims for a set off are mere afterthoughts which have not been justified and the same shall fail. In the opinion of the court, the liability in the set off ought to have been established in the ensuing administrative disciplinary process but which was not shown to have been so established. RW confirmed that at the time of signing of the agreement the issue of set off was never raised or discussed as it was never captured in the agreement. RW also confirmed that the auditors never prepared a report on the funds allegedly misappropriated by the claimant and RW further stated that there was no evidence that the claimant misappropriated the funds as alleged. The set off will therefore fail.

In conclusion, judgment is entered for the claimant against the respondent for:

1. The respondent to pay the claimant **Kshs. 564, 794.00** by 1.02.2015 in default interest at court rates to be payable from the date of filing the suit being 8.02.2013 till the date of full payment.

2. The respondent to pay costs of the suit.

Signed, dated and delivered in court at **Nyeri** this **Friday, 19th December, 2014.**

BYRAM ONGAYA

JUDGE