



**REPUBLIC OF KENYA**

**Industrial Court of Kenya**

**Cause 1852 of 2011**

**JUSTUS MACHARIA KINYUA.....CLAIMANT/APPLICANT**

**VS**

**TEULE KENYA.....RESPONDENT**

**RULING**

1. On 7th November 2011 the Claimant filed a Memorandum of Claim seeking payment of his terminal benefits by the Respondent. The Respondent did not file a Reply to the Claimant's claim.
2. The simple facts of this case are that the Claimant was employed by the Respondent in the month of January 2010 in the position of Executive Director at a monthly gross salary of Kshs. 100,000.
3. On 14th April 2010, the Claimant wrote to the Respondent, tendering his resignation with immediate effect. The Claimant offered to forfeit his April 2010 salary together with earned leave days in lieu of notice.
4. In his resignation letter, the Claimant asked the Respondent to compute his terminal benefits plus his unpaid salaries for January, February and March 2010. Prior to filing this case the Claimant's Advocates wrote to the Respondent on 13th September 2011, asking for payment of Kshs. 300,000, being the Claimant's dues.
5. The Claimant produced an electronic mail dated 15th September 2011 sent from [jonjuu@gmail.com](mailto:jonjuu@gmail.com) by one Jon Juu of Teule Kenya, vide which the said Jon Juu acknowledged receipt of the demand letter from the Claimant's Advocates and confirmed that the Claimant was owed some arrears by HCI-Kenya. Jon Juu asked the Claimant to withhold legal action, promising to settle the said arrears by the end of December 2011.

6. The Respondent did not settle the Claimant's dues and the Claimant moved the Court by way of Notice of Motion dated 29th November 2012, seeking an order for summary judgment. The application was argued by Counsel for the Claimant on 28th January 2013. There was no appearance for the Respondent.

7. Black's Law Dictionary (Ninth)Edition defines summary judgment as:

***A judgment granted on a claim or defense about which there is no genuine issue of material fact and upon which the movant is entitled to prevail as a matter of law.***

8. Summary judgment is ordinarily applicable where the claim is liquidated. Blacks' Law Dictionary aforementioned defines a liquidated claim as:

***A claim for an amount previously agreed upon by the parties or that can be precisely determined by operation of law or by the terms of the parties' agreement.***

9. The Claimant's claim in this case is for the sum of Kshs. 300,000, being outstanding dues. According to the Claimant's contract of service, the Claimant's employment took effect on 4th January 2010 while the Certificate of Service gave 1st January 2010 as the effective date. According to the Claimant's letter of resignation, his resignation took effect on 14th April 2010 while the Certificate of Service gave his last date of work as 16th April 2010.

10. The contract of service at Clause 9.1.2 required the Claimant to give three months' termination notice or in the alternative to forfeit one month's pay in lieu of notice. In his letter of resignation, the Claimant offered to forfeit his April 2010 salary together with earned leave days. Since the Claimant worked for three and a half months, his prorata leave would have been approximately five days. Adding this to the days worked in April would still leave a deficit of accrued work days in the month of April 2010. The Court was therefore unable to establish the basis for the exact claim amount of Kshs. 300,000.

11. In seeking summary judgment, the Claimant relied on the electronic mail sent to him by one Jon Juu on 15th September 2011. I have perused the Claimant's contract of service as well as his Certificate of Service dated 31st March 2010 and do not find any official connection between Jon Juu and the Respondent. The Court cannot therefore use Jon Juu's electronic mail as an admission of the Claimant's claim by the Respondent.

12. In view of the foregoing, I find that a clear case for summary judgment as defined in law has not been made out. The Claimant/Applicant's application for summary judgment dated 29th November 2012 is therefore dismissed.

13. The costs of this application will be in the cause.

**DELIVERED IN OPEN COURT AT NAIROBI THIS 12TH DAY OF FEBRUARY 2013**

**LINNET NDOLO  
JUDGE**

**In the Presence of:**

.....**Claimant/Applicant**  
.....**Respondent**