



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO.1134 OF 2010

AARON SAFARI MUTINDA.....CLAIMANT

VS

KENYA SECULARAMS LIMITED.....RESPONDENT

Mr. Ngala for the Claimant

AWARD

The Claimant filed this suit dated 15/9/2010 on 19/9/2010 seeking the following relief;

- i) One month's salary in lieu of notice in the sum of Kshs.31,873/=
- ii) Salary for July 2010 in the sum of Kshs.15,713/=; and
- iii) Payment in lieu of leave days in the sum of Kshs.28,398/=.

The claim is supported by the annexures to the statement of claim one of which is a letter of employment dated 11/8/09. In terms thereof the Claimant was employed with effect from 15/8/09 as an operations controller at a monthly gross salary of Kshs.37,000/=.

He worked continuously for the Respondent until 15/7/2010 when the Managing Director of the Respondent terminated his services on grounds that the Respondent could no longer afford to pay him. Though he was not given a letter of termination he received a certificate of service dated 19/7/2010 attached to the claim. In terms of the letter he had a good record of service.

The Accountant of the Respondent computed the terminal benefits payable to the Claimant as claimed in this suit, but the Respondent in spite of a letter of demand by Ngara Morara & Company Advocates dated 9/9/10 has failed and/or neglected to pay the same.

The Claimant therefore, prays for an award in terms of the Statement of Claim with costs.

The Respondent filed a statement of Reply dated 11/10/2010 but has failed to attend the hearing of this case though the date was taken in court by consent of the parties.

In the Statement of defence, the Respondent concedes that it owes the Claimant the salary for July 2010 in the sum of Kshs.15,713/= and makes a bare denial of the claim for payment in lieu of leave.

The Respondent alleges that the Claimant left the employ of the Respondent voluntarily and thus is not entitled to payment in lieu of notice.

The court is satisfied with the evidence adduced by the Claimant in support of his claim that his services were terminated without notice by the Respondent. The court is also satisfied that for the 11 months he worked, he was not granted leave.

This finding is fortified by the tabulation of terminal benefits done by the Respondent itself showing that the Respondent owes the Claimant all the amounts outlined herein before.

The court therefore enters judgment in favour of the Claimant as follows;

- a. Payment of Kshs.15,713/= being salary for days worked;
- b. Kshs.28,398/= being payment in lieu of leave days not taken. The court notes that this was listed as gratuity in the tabulation filed. The claimant, however clarified that this was meant to cater for leave days not taken. The claimant was registered with NSSF; and
- c. Kshs.31,873/= being payment in lieu of notice.

The court notes that the tabulation is done less statutory deductions.

Total sum awarded therefore is Kshs.75,985/=

- d. Costs of the suit.

It is so ordered.

DATED and DELIVERED at Nairobi this 2nd day of July, 2013.

MATHEWS N. NDUMA

PRINCIPAL JUDGE – INDUSTRIAL COURT