



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO. 1319 OF 2012

NOKOLAI HUNJA CLAIMANT

Versus

VERSUS KENCALL EPZ LIMITED RESPONDENT

JUDGEMENT

This is a claim file don 3rd August 2012 by the claimant Nikolai Hunja for unpaid terminal dues by the respondent, Kencall EPZ Ltd. Summons herein were received by the respondent on 16th August 2012 but no appearance or defence was entered or filed. On 29th November 2012, a Mention notice was served and acknowledged by the respondent but they failed to attend court for directions. On 28th January 2013, the respondent acknowledged receipt of a hearing notice but did not attend court as scheduled and or directed. On 29th November 2012 the court mentioned the matter but the respondent was absent and did not attend court despite being served and the court directed the respondent be served against with a mention on 6th December 2012. When the matter came for hearing on 16th July 2013, the respondent was absent despite being served with the hearing notice for the day.

The claim

It was the claimant's case that by a letter of employment dated 17th December 2011 he was employed by the respondent at a salary of kshs.90, 000.00 who was engaged in service delivery. That despite working for several months, the respondent failed to pay him his dues and salaries and by a letter dated 30th may 2012, the respondent confirmed to the claimant as owing salary arrears and promised to pay in 5 months instalments from June 2012. That despite requests, the respondent has now refused to pay these salary arrears all amounting to kshs.321, 198,000.00. The claim if for this outstanding amount together with costs and interests.

In evidence, the claimant gave his sworn evidence and stated that he has been employed by the respondent on two occasions once as Head of Quality and then as Accounts Manager/Service Manager. He commenced work with the respondent in May 2007 as Sales Representative and was promoted through the ranks and became the Quality Manager. He was managing the quality valuations of all services rendered by the respondent at their call centre. He was paid kshs.90, 000.00 per month but the respondent got into financial problems and for 4 months he was not paid his salary causing him to resign to avoid more debt. He gave 3 months notice and terminated his contract of employment where he noted the respondent's inability to pay his salary.

On the second occasion, the claimant was appointed on 17th December 2011 when the respondent Chief Executive officer called him and asked him to assist rescue a project they had problems with at Unga

limited. On 15th January 2011 the claimant was appointed and commenced work as Kshs.90, 000.00 per month and after his probation, this was increased by Kshs.10, 000.00 however there were delays but it was done [increment]. After 4 months, the respondent was not able to pay and the claimant was asked to be patient. That through the work that the claimant did, the respondent was paid huge sums of money by the various clients but he was not being paid his salaries and in April 2011, he resigned.

That the first time the claimant left due to non-payment of his salary while the second time, he was to get his dues and not renege on the new contract. That when he took up the second contract, he asked the executive officer to give him a letter of his terminal dues which he did with a summary admitting owing Kshs.137,207.00 and terminal dues being Kshs.183,931.00 all totalling to Kshs.321,198.00. They made a commitment to pay in 5 months instalments which was never honoured.

That by the respondent's own admission, they agreed to pay the outstanding amounts but have never made any payments since. He made demand but was never paid. His claim is therefore for the sum of kshs.321, 198.00 together with costs and interest.

Assessment

Every employee is entitled to be paid his salary for work done. Whatever the reasons for termination, whether through summary dismissal, termination by notice or where one is on a specific contract, the work undertaken should be remunerated. This follows the provisions of section 18 of the Employment Act. Under part 18 (5) (a);

(5) Upon the termination of a contract of service—

(a) by effluxion of time, it shall be the duty of the employer to ensure that the employee is paid the entire amount of the wages earned by or payable to the employee and of the allowances due to him as have not been paid;

By a contract of service dated 17th December 2011, the claimant was employed by the respondent on a monthly salary of kshs.90, 000.00 and by a letter dated 30th May 2012; the respondent undertook to pay outstanding salaries amounting to Kshs.321, 198.00.

I note from this letter of 30th may 2012, Mr. Nicholas Nesbit outlined the amounts owed to the claimant stating;

... Total owed 2011-2012 KES 321,198

We commit to paying the said amount in 5 instalments, starting June 2012, which translates to KES64, 239 per month.

We regret the inconvenience caused with the delays and are committed to maintaining a good relationship through this challenging time

...

I take it then, by the claimant having filed this claim, the respondent had dishonoured their commitment to make payments despite the admission and confirmation as owing and willing to pay. This amount therefore remains unpaid due to salary arrears and terminal dues owing.

I therefore enter judgment for the claimant as against the respondent in the following terms;

- a. An award of terminal dues amounting to kshs.321,198.00;
- b. Costs of the suit; and
- c. Interest on (a) and (b) above at court rates from the date of filing the claim until payment in full.

Delivered in open court this 20th day of August 2013.

M. Mbaru

Judge

In the presence of

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