



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA**

**AT MOMBASA**

**CAUSE NO 105 OF 2013**

**JACKSON M. RUNYA .....CLAIMANT**

**VERSUS**

**SHIFA CHEM LTD .....RESPONDENT**

**J U D G M E N T**

The claimant has brought this suit against the respondent claiming employment terminal dues accruing to ksh.257,383, damages, costs and interest. The respondent has denied liability and only admitted the claim for 15 days salary arrears and 7 days accrued leave days. The suit was heard on 15/7/2013 when the claimant testified as CW1 and Mustafa Muhammed Ali testified for the respondent as Rw1.

CW1 told the court that he was employed by the respondent from 2000 to 2013 as a salesman on permanent basis. That his duties involved sales of medicine and his salary was ksh22000 but no house allowance. That on 15/1/2013, he tendered his written notice to terminate his services with effect from 15/2/2013 (exhibit 1). That when it was two days to go, he went to see the RW1 to discuss his terminal dues but he was told that no dues were payable because he voluntarily resigned. He was never paid his salary for the 15 days worked in February 2013 and he prayed for judgment for the same.

He also prayed for judgment for overtime worked from 2000 to 2013 at the rate of 3 days per month which he worked outside Mombasa city. He produced a book (exhibit 2) to show that he used to work for three days outside Mombasa between 2011 and 2013. He contended that the other books were in the custody of the respondent. He also prayed for cash pay in respect of leave days outstanding. He denied the debt of ksh.7568/ as alleged by the respondent saying that the money was used properly towards the distribution of calendars and special offers.

On cross-examination he admitted that after serving demand letter the respondent admitted 7 days leave and 15 days unpaid salary. He however contended that every time he went on leave he used to sign for the same but the respondent always called him back to work after 14 days but he never paid for the unutilised leave days. He contended that his resignation was not voluntarily but forced by the respondent after complaining about money he paid as bribe to drugs inspectors when he was arrested for delivering to unregistered chemists. That the respondent told him to bribe but when he returned to the office he was not refunded the bribe money.

RW1 admitted that the claimant was their salesman but there was no formal contract. That he resigned voluntarily by notice dated 15/1/2013 which took effect on 15/2/2013. He contended that his gross salary was ksh.22000/ per month. He admitted that the respondent was ready to pay salary for 15 days worked in February 2013. That the claimant was entitled to 21 days leave per year and went for all his leave

except for 7 days not utilized in 2012. He added that he was paying NSSF for the claimant during his service. He also contended that the claimant did not account for his imprest and produced documents to prove the imprest advanced to him (exhibit d.2 ). He insisted that the only dues payable to the claimant was ksh.7977 net of the imprest advanced. After the clause of hearing the parties filed written submissions.

I have carefully perused the pleadings, evidence and the submissions and I am satisfied that I have the jurisdiction to determine the dispute before me. The only issue for determination is whether the claimant is entitled to the reliefs sought. I am satisfied with the records of employment produced by the responded to prove that the claimant went for all his leave days except for 7. The explanation by the claimant that he used to be recalled after utilizing only 14 days, of his leave is dismissed. Why did he wait until he terminated his service 12 years down the road to demand for the same? In my view the claimant did not appear to be unschooled. He was a professional doing sales work and he was able to demand for his rights in good time.

I have therefore awarded him 7 un-utilized leave days of Ksh.5065 and the salary for 15 days worked in February 2013 of ksh.11000/- of which the respondent admitted liability even before filing the suit. I have however dismissed the claim for house allowance and agree with the respondent that the salary of ksh.22000 was consolidated pay. It is not proper at this time for the claimant who was a salesman to demand house allowance at this time. He should have done that when he was still working for the respondent. Without any contract to show that the salary was not consolidated the court will not award the claim for house allowance after 12 years of service.

I also dismiss the claim for general damages because it has no basis in contracts of employment. Besides, the claimant did not plead and tender any evidence in support of a prayer for unfair termination. I will however award the claim for service pay for 2 years at the rate of 30 days per year of service. This is because the record of NSSF produced show that from 2000 to 2009, the respondent deducted money from the claimant for NSSF and failed to remit it to NSSF for at least 23 months. That was a serious crime but the court will instead compensate the claimant as aforesaid which means 2 months salary for the 23 months of unremitted NSSF.

I will dismiss the respondents allegations of Ksh.7568 imprest in view of the explanation by the claimants. There was no clear evidence to prove the counter claim on a balance of probability.

Consequently, I enter judgment for the claimant against the respondent as follows:

- a. **15 days salary for February 2013 .....11,000**
- b. **7 days leave .....5,065**
- c. **service pay (30daysx2x22000).....44,000**

**60,065**

The claimant will also have costs and interest.

Orders accordingly.

**Signed, dated and delivered this 20th September 2013**

**ONESMUS MAKAU**

**JUDGE**