



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 1275 OF 2012

BETWEEN

JOTHAM WANASWA BELENGU CLAIMANT

VERSUS

CHRISTIAN STUDENT LEADERSHIP CENTRE.....RESPONDENT

Rika J

CC .Elizabeth Anyango

Ms. Kwinga instructed by Oduk & Company Advocates for the Claimant

Ms. Mungai instructed by F.N.Mungai & Company Advocates for the Respondent

ISSUE IN DISPUTE: TERMINAL BENEFITS

AWARD

1. Parties to this Claim appear to have chosen to adopt the Civil Procedure Act Cap 21 the Laws of Kenya, in the filing of their pleadings. The Claimant has been named as the Plaintiff, and the Respondent as the Defendant. The terms Plaintiff and Defendant are not known to the Industrial Court [Procedure] Rules 2010, which regulate the proceedings of this Court. There is no Plaintiff and there is no Statement of Defence; Proceedings are originated through a Statement of Claim, and defended through a Statement of Reply. Parties must adhere to the existing laws in filing, prosecuting, and defending their respective cases at the Industrial Court. The Court could justifiably find the Claim to be improperly filed and strike it out.
2. The Plaintiff filed on 25th July 2012 shall however be amended by the Court to read 'Statement of Claim,' 'the Plaintiff' is amended to read 'the Claimant,' the Statement of Defence' shall be 'the Statement of Reply' and the term ' Defendant' is rectified to read ' Respondent.'
3. The Claimant gave evidence and closed his case on 6th December 2012, while the Respondent gave evidence through its Officer David Maina Nguyo, bringing proceedings to a close on 8th February 2013. The dispute was last mentioned in Court on 14th March 2013, when the Court confirmed the filing of the Parties' Final Arguments and advised Award would be delivered on notice.
4. The Claimant stated that the Respondent is an Association administered and jointly owned by the National Council of Churches of Kenya and the Kenya Episcopal Conference. The Respondent employed the Claimant as an Accountant, with effect from 1st January 2011, ending 31st December 2011, a period

of 1 calendar year. He would be paid a basic monthly salary of Kshs. 46,708; commuter allowance of Kshs. 4,245; leave allowance of Kshs. 5,237; and overtime pay for excess hours worked.

5. The Respondent terminated the Claimant's contract of employment on or about 31st October 2011. The Claimant states he was not paid his final dues. This Claim is brought in pursuit of these final dues.

6. He seeks payment of:-

- a. Outstanding salary as at 31st December 2012 at Kshs. 46,708;
- b. Commuter allowance at Kshs. 4,245;
- c. 12 days leave pay at Kshs. 20,381.20; and,
- d. 2007, 2009 and 2010 overtime pay at Kshs. 119,739.55

The Claimant seeks Kshs. 140,120.75, less tax of Kshs. 35,968, total Kshs. **104,153**. He prays for costs and interest.

7. He explained that he worked for the Respondent for a total of 5 ½ years. The contract starting 1st January 2011 was in the form of a renewal. There were several problems experienced by Belengu during employment. The Respondent used to raise complaints of a petty nature: alleging for instance that the Claimant had parked his car at the wrong place and gone to the bank without permission. The reason given to him for termination was that the Board of Directors had resolved not to renew the contract. He was offered some terminal benefits which he rejected on the ground that the benefits were insufficient. He was offered gratuity at 30% of his basic pay. It was not explained to him how this was arrived at. He worked on Sundays and did not receive compensation for excess hours worked.

8. On cross-examination, the Claimant stated that there was no provision for overtime pay in his contract. Commuter allowance was payable as the Claimant commuted to work. He was paid salary up to December 2011. He does not plead that his contract was terminated illegally. He invokes the provisions of the law in calculating overtime. Belengu testified that he was offered Kshs. 58,309 by the Respondent; he wrote back asking for Kshs. 69,674. In Court, his demand rose to Kshs. 104,153. He explained that he had not factored in overtime pay when he made his demand before the filing of the Claim.

9. Nguyo for the Respondent told the Court that the Claimant was its employee, in the position of Accountant, from 3rd July 2006. He left employment on expiry of his contract, on 31st December 2011. He was given notice by the Respondent that there would be no renewal, in October 2011. From 1st November 2011 to 31st December 2011, he took terminal leave. By 31st December 2011, he had 12 outstanding leave days, and 41 ½ extra days worked, which had not been compensated. His dues were computed and offered at Kshs. 58,309. He rejected the money. He demanded for Kshs. 69,674.

10. The witness testified on cross-examination that overtime work was not regulated under the contract. When an employee incurred excess hours at work, they were compensated by extra days off duty. It was only the Management staff who earned travel allowance. The law did not require that the Respondent pays overtime pay based on gross pay. He agreed the days had accrued, and conceded that the computation by the Respondent had some discrepancies.

The Court Finds and Awards:-

11. The Claimant was employed by the Respondent for 5 ½ years, as an Accountant. He served on periodic contracts of employment, the last of which ran from 1st January 2011 to 31st December 2011. The Claimant does not seek damages, and there is really no case that termination on 31st December 2011, was in any way wrongful or unfair. The contract expired on 31st December 2011, and the Respondent opted, as was entitled to under the contract, not to renew. The issue that the Court is called upon to resolve is the narrow issue of terminal benefits payable to the Claimant at the end of his contract.

12. He wrote to the Respondent on 24th January 2012, some 6 months before he escalated the dispute to Court, demanding to be paid the total sum of Kshs. 69,674. The Respondent had earlier computed and offered terminal benefits at Kshs. 58,309. The Claimant pleads a total of Kshs. 104,153, having added claims for overtime pay stretching back to 2007. He was not able to persuade the Court on these claims. The contract under which he served in 2007 ended, and any claims under that contract, should have been made to the Respondent, upon lapse. He did not explain to the Court why he would wait until 2011, to claim overtime that accrued in 2007. He similarly did not demonstrate that he worked excess hours in 2009 and 2010, or that if he worked there was no compensation in the manner stated by the Respondent. His contract states he would work a maximum of 45 hours spread over 6 days. He would serve 5 hours, either on Saturdays or Sundays. These hours of work were reasonable and within the law.

13. The additional claim for overtime pay appears not well founded in law and fact, and pleaded in afterthought, after the Respondent refused to pay the sum of Kshs. 69,674 demanded by the Claimant. The claim of Kshs. 104,153 is rejected. The Respondent acknowledged that its own computation was erroneous. Mr. Nguyo testified there were discrepancies in Respondent's computation. An examination of the computation by the Claimant, communicated to the Respondent in the letter of 24th January 2012 appears to the Court to be the correct computation of what should have been paid as the final dues. The figure offered by the Respondent of Kshs. 58,309, is rejected. No satisfactory explanation was given by the Respondent why it excluded commuter allowance for the period November to December 2011. The allowance had been paid to the Claimant in the past months. The Claimant's position on accrued leave and computation of PAYE tax has merit. In the end, IT IS ORDERED-:

[a] The Respondent shall pay to the Claimant a net total of Kshs. 69,674 in terminal benefits; and,

[b] No order on the costs.

Dated and delivered at Nairobi this 17th day of **September, 2013**

James Rika

Judge