



**REPUBLIC OF KENYA**

**Industrial Court of Kenya**

**Cause 1143 of 2010**

**DANIEL JUMA .....CLAIMANT/APPLICANT**

**VS**

**RIFT VALLEY AGENCIES.....RESPONDENT**

**JUDGEMENT**

The claimant has brought a suit against the Respondent, his former employer seeking:-

(a) Salary arrears due to under payment between 31/5/09 – 18/12/09	-	Kshs.254,315.35
(b) 18 days wages for December 2009	-	Kshs. 18,063.00
(c) Two Months Notice	-	Kshs. 21,436.00
(d) 22 days public holidays for 2 years	-	Kshs. 67,715.70
(e) 2 years annual Leave	-	Kshs. 17,313.70
(f) 16 years severance pay of 15 days per year	-	Kshs. <u>85,744.00</u>
	-	<b><u>Kshs. 448,988.65</u></b>

He also prays for costs and any other remedy they may deem fit. He avers that he was employed on 7-3-1996 but dismissed unfairly on 18-12-2009 on account of redundancy. That although he worked continuously since 7-3-1996 he was confirmed permanent employee on 31-7-2008. That the termination was without prior notice or pay in Lieu of Notice. That the dispute on computation of terminal dues was reported to the labour officer. That labour office with the consent of the parties calculated the terminal dues payable to claimant as Kshs.337,729.85 as per Appendix DJO/5.

The Respondent has denied the liability and the jurisdiction of this court over the dispute in issue. She maintains that the claimant was only a casual worker on a day-to-day basis. That the claimant has been paid all his dues.

The claimant testified on 6-9-2012 and said that he did not know the reasons for his dismissal. That he was only given a letter and told to go home. That he had worked for a continuous period of 13 years. On cross examination he confirmed that at the meeting the labour officer calculated his dues at Kshs. 272,342.90 as per Appendix DJO 3.

The defence called Edward Kirotych Kiptanui a Director of the Respondent. He confirmed that the claimant was his former employee working as storekeeper. That there were persistent short falls in the company's sales. The company was also not doing well financially. The Respondent gave a termination letter and later attended of conciliation meetings at the labour officer. The labour officer calculated the terminal dues of Kshs.272,342.90 and respondent agreed to pay that figure.

The above was net of Kshs.11,964.00 being the shortfall attributable to the claimant. He disputed the claim for Kshs.448,988.65 as terminal dues by the claimant.

At the close of the hearing I entered judgment on admission for the undisputed sum of Kshs.272,342.90 in exhibit DJO3 pending the determination of the disputed claim. Both parties filed written submissions which I have carefully considered alongside the pleadings and the evidence on record. The issues for determination are:-

- (a) Whether this court has the jurisdiction to entertain the suit before it?
- (b) Whether termination of the contract of employment by the Respondent was unlawful?
- (c) What remedy is available for the claimant?

I have no doubt that the Respondent is aware that Article 162(a) of the Constitution and the Industrial Court Act has given this court exclusive jurisdiction to deal with all labour and employment disputes. I will therefore hold that my jurisdiction to entertain this suit is unfettered.

On the second issue, the parties did not seem to major on it. The conciliation proceedings seem to have resolved the issue in a way such that the Respondent accepted to pay two months' salary in lieu of notice in addition to other terminal dues. I will therefore not waste more energy on the matter as it seems to me that the main issue is about the quantum of terminal dues payable to the claimant. This view is fortified by the fact that the claimant did not pray for any relief for unfair and unlawful termination.

On the third issue, the claimant has prayed for Kshs.448,988.65. The exhibit DJO3 shows that the labour officer calculated the net pay of Kshs. 272,342.90 while in DJO5 he calculated Kshs.337,729.85.

I have considered the above contradiction and resolved it by accepting the quantum calculated in Exhibit DJO5 at Kshs.337,729.85. I believe that the parties agreed to have the terminal dues being calculated by the labour officer during the conciliation. It is obvious that during the conciliation meeting the officer may have forgotten certain items like the number of months for calculating arrears or leave. I will therefore admit the assessment by the labour officer as expert opinion which has not been challenged by the Respondent. He did not request for opportunity to cross examine him on how he arrived at the quantum. This sum will however, be subjected to statutory deductions and any advance payment in terms of the judgment entered on admission on 28-9-2012.

The claimant will also have costs of this suit plus interests.

**Orders accordingly.**

**DATED and DELIVERED** at Nairobi this 16<sup>th</sup> day of November, 2012.

**Onesmus Makau**  
**JUDGE**