



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 1416 of 2011

FRIDAH NDINDA

MWIKYA.....CLAIMANT

VS

PETER MUINDE T/A ENEM INTERBROKERS AUCTIONEERS.....RESPONDENT

AWARD

By a Memorandum of Claim dated 16th August 2011 and filed in Court on 18th August 2011 the Claimant sued the Respondent for wrongfully withholding her remuneration. The Respondent did not file a Reply nor did he attend the hearing. The matter therefore proceeded *ex parte* on 30th October 2012 with Mr. Mwihuri instructed by the firm of Ojiambo & Company Advocates, appearing for the Claimant.

The facts of the case are that the Claimant was employed by the Respondent on 10th February 2011 in the position of Field Operations Officer at a monthly salary of Kshs. 25,000 (letter of appointment is marked "FN1" in the Claimant's documents).

According to the letter of appointment the Claimant was to be on probation for a period of 3 months. The Claimant worked for the Respondent for a period of 3 months but the Respondent failed to pay her salary as agreed forcing the Claimant to leave employment.

In her Statement of Claim, the Claimant claimed the sum of Kshs. 75,000 being salary for the days worked from 10th February 2011 to 10th May 2011. She also claimed costs of the suit.

In her sworn evidence the Claimant told the Court that since filing of this case the Respondent had paid her the sum of Kshs. 30,000 by voucher. She was therefore claiming the balance of Kshs. 45,000 together with costs of the suit.

Employee wages are protected under Part IV of the Employment Act, 2007.

Specifically Section 17(1) provides that:

(17). (1) Subject to this Act, an employer shall pay the entire amount of the wages earned by or payable to an employee in respect of work done by the employee in pursuance of a contract of service directly, in the currency of Kenya-

(a) in cash;

(b) into an account at a bank, or building society, designated by the employee;

(c) by cheque, postal order or money order in favour of the employee; or

(d) in the absence of an employee, to a person other than the employee, if the person is duly authorised by the employee in writing to receive the wages on the employee's behalf.

It is not in dispute that the Claimant was employed by the Respondent effective 10th February 2011 and that her monthly salary was Kshs.25,000. The Respondent did not rebut the Claimant's evidence that he owes her the sum of Kshs. 45,000 as unpaid salary arrears. The Respondent did not advance any reason why he continues to withhold the Claimant's salary long after her leaving employment.

I therefore award the Claimant the sum of Kshs. 45,000 to be paid by the Respondent in 1 installment within the next 30 days from the date of this Award.

I make no order for costs.

DELIVERED IN OPEN COURT AT NAIROBI THIS 6TH DAY OF DECEMBER 2012.

**LINNET NDOLO
JUDGE**

In the Presence of:

.....**Claimant**

.....**Respondent**