



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 563 OF 2014

STANLEY NJUGUNA MUIRURI.....CLAIMANT

v

LAKE NAIVASHA PANORAMA PARK....RESPONDENT

JUDGMENT

1. Stanley Njuguna Muiruri (Claimant) resigned from his position as Head of department with Lake Naivasha Panorama Park (Respondent) through a letter dated 5 June 2013. The resignation was effective from 9 June 2013.
2. On 30 October 2014, the Claimant commenced legal action against the Respondent seeking terminal dues and underpayments.
3. The Respondent filed a Memorandum of Defence on 10 December 2014, prompting the Claimant to file a Response to Memorandum of Defence on 16 December 2014.
4. The Cause was heard on 20 July 2016 and 11 October 2016 after which the Claimant filed submissions on 25 October 2016, while the Respondent's submissions were filed on 7 November 2016.
5. The Court has considered the pleadings, evidence and submissions and identified the issues for determination as, *whether the Claimant is entitled to award of house allowance, whether the Claimant was underpaid and whether the Claimant is entitled to severance pay/gratuity.*

House allowance

6. The Claimant was issued with a written contract dated 9 June 2009.
7. The contract provided for a gross consolidated salary.
8. By dint of section 31 of the Employment Act, 2007, the primary obligation upon an employer is to provide an employee with housing accommodation.
9. In default of providing housing accommodation, the employer ought to pay the employee an allowance in addition to the salary to cover rent.
10. The provision of housing accommodation or house allowance however does not apply where the contract of employment contains a provision that the remuneration paid is consolidated.
11. The Claimant, in the view of the Court therefore cannot legally sustain a claim for house allowance.

Underpayments

12. Underpayments may arise because an employer is paying wages below the prescribed minimum wages which are normally gazetted every year or because an employer is paying wages below the contractually agreed rates.

13. The Claimant did not provide the particulars or nature of underpayments in the Memorandum of Claim though he annexed a copy of a Regulation of Wages Order for 2013.

14. During testimony, the Claimant contended that he should have been earning Kshs 18,960/- per month in consideration of the work he was doing.

15. A Head of Department is not one of the occupations listed in the Regulation of Wages Orders.

16. The Claimant also did not prove that he had the qualifications necessary to be considered as a Graded Artisan in his field of work.

17. The Court therefore finds that the Claimant has not demonstrated that he was either underpaid in terms of the law or contract.

Severance pay/gratuity

18. Severance pay, under statutory law applies in situations of redundancy. The Claimant resigned and his position was not declared redundant and so a claim for severance pay is misplaced.

19. Gratuity on its part can either have a contractual or legal basis.

20. The Claimant did not lead any evidence to show that he was entitled to gratuity either under contract or statute. The claim therefore is legally untenable.

21. If by severance pay or gratuity the Claimant meant service pay in terms of sections 35(5) of the Employment Act, 2007, his membership of the National Social Security Fund as evidenced by the pay slips filed would disentitle him to the same.

Conclusion and Orders

22. The upshot of the above is that the Court finds no merit in the cause of action presented and orders that the Memorandum of Claim be dismissed with costs to the Respondent.

Delivered, dated and signed in Nakuru on this 2nd day of December 2016.

Radido Stephen

Judge

Appearances

For Claimant Mr. Opar instructed by Muthanwa & Co. Advocates

For Respondent Ms. Wachira instructed by Mwangi Kinyanjui & Co. Advocates

Court Assistant Nixon/Daisy