



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 1072 OF 2004

WAIGWA KIBOI..... PLAINTIFF

V E R S U S –

THE STANDARD LIMITED..... DEFENDANT

JUDGEMENT

1) Waigwa Kiboi, the plaintiff herein, filed a claim based on contract against the Standard Ltd, the defendant herein vide the plaint dated 27th September 2004. In the aforesaid plaint the plaintiff prayed for judgment as follows:

- i. Ksh.3,300,474/10*
- ii. General damages for breach of contract and termination of services.*
- iii. Costs of the suit*
- iv. Interest (a), (b) and (c) above.*
- v. Any other relief the court deems fit.*

2) The defendant filed the amended defence dated 14.12.2004 to deny the plaintiff's claim.

3) When the suit came up for hearing the plaintiff (PW1) Charles Chege (PW2) and one Titus Omondi (PW3) were the only witnesses who testified in support of the plaintiff's case while the defendant failed to summon any witness to testify in support of its defence. The plaintiff gave a detailed account of the work he carried out on behalf of defendant in the plaint. Waigwa Kiboi (PW1) told this court that the defendant exclusively benefited from the supplements he provided even after the arbitrary termination of his services. He stated that he was entitled to the collection of cheque commission based on the gross figure and the sales commission was based on the net value after V.A.T.

4) PW1 pointed out that the sales commission was paid as follows:

- i. For the first ksh.240,000/= - there was a 10% commission*
- ii. From Ksh.240,000/- to ksh.480,000 the commission was 15%*
- iii. From ksh.480,000/= to ksh.720,000/= the commission payable was 16%*
- iv. From ksh.720,000/= and above, the commission payable was 17%.*

5) The plaintiff claimed that he is entitled to the following unpaid commissions:

- a) Supplement on 23.12.2001 ksh.15,949/20
- b) Supplement on 22.09.2002 ksh.906,847/10
- c) Supplement on 02.10.2001 ksh.889,440/=
- d) Supplement on 26.03.2004 ksh.999,440/=

6) The plaintiff averred that his services were arbitrary terminated by the defendant following his constant reminders to settle the outstanding commissions payable and for a refund of his travel expenses for the Libyan Embassy. The plaintiff also stated that the defendant earned substantial income but has failed to pay his commission. The plaintiff in his testimony presented documents showing the earnings the defendant made as a result of the supplements and the commissions he was entitled to receive. He also produced copies of travel expenses for the Libyan embassy supplements which are receipts issued and used in Tanzania for accommodation, air ticket and food between 10th June 1999 and 12th June 1999.

7) During cross-examination, the plaintiff testified and stated that he had an oral contract with the defendant Charles Chege (PW2) told this court that he worked as a freelance advertising executive since 1992 with the defendant and he worked with the plaintiff (PW1) and that the defendant paid freelance journalists and advertising executives by way of commission as follows:

- a) From ksh.0 – 240,000 10%
- b) From ksh.240,000 – 480,000 15%
- c) From Ksh.480,000 – 720,000 16%
- d) From Ksh.720,000 and above 17%

8) PW2 stated in his testimony that PW1 did carry out work on behalf of the defendant including the supplements on the Libyan Embassy. PW2 was also clear in his testimony that the defendant at times provided its freelance executives with a written or oral contract of employment. PW2 further stated that he was aware that PW1 had a contract with the defendant and that he worked together with the defendant since the year 1992 when he joined the defendant. He also stated that for freelance journalist and advertising executives, the payment was on a commission basis by the defendant. Titus Omondi (PW3) stated that he worked with PW1 in the defendant’s employment as freelance advertising executive.

9) PW3 gave near similar evidence as those presented by PW1 and PW2. At the close of the plaintiff’s case, the defendant decided to close its case without summoning witnesses to testify in support of the defence. At the close of evidence, learned counsels were invited to file written submissions.

10) The following issues arose for determination: First, whether or not there was a contract between the plaintiff and the defendant.

Secondly, whether or not there was a breach.

Thirdly, whether or not the plaintiff is entitled to the orders sought in the plaint.

11) On the first issue as to whether or not a contract between the plaintiff and the defendant existed. The defendant has denied its existence. However, the evidence of PW1, PW2 and PW3 are in agreement that there existed a contract between the plaintiff and the defendant. The evidence tendered by the aforesaid witnesses were not controverted by the defendant. Consequently, I find that on a balance of probabilities that the plaintiff has proved that he had a contract with the defendant.

12) The second issue is whether or not there was a breach. I am convinced by the evidence presented by the plaintiff (PW1) that the defendant breached the contract when it failed to make payments in form of commissions and a refund of expenses incurred by the plaintiff.

13) On the last issue as to whether or not the plaintiff is entitled to the claim, I am convinced that the plaintiff has established his claim using the documentary evidence he and his witnesses presented.

14) In the end, I enter judgement in favour of the plaintiff and against the defendant as follows:

- i. Ksh.3,565,943/50 as commissions for the supplements between 23.0.001 and 12.10.2005.**
- ii. Ksh.30,135 being a refund of travel expenses.**
- iii. Costs of the suit.**

Dated, Signed and Delivered in open court this 31st day of May, 2018.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant