



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. E001 OF 2021

SYLVESTER KADIKINYI.....CLAIMANT

VERSUS

AGRIMAC CONSORTIUM LIABILITY PARTNERSHIP.....1ST RESPONDENT

MELLECH ENGINEERIN AND CONSTRUCTION LIMITED.....2ND RESPONDENT

GERALD WAMALWA.....3RD RESPONDENT

JUDGMENT

Introduction

1. The Claimant lodged this claim against the Respondents on 4th January, 2021, seeking payment for unpaid remuneration, compensation, reimbursement, a declaration that his dismissal from the service of the Respondents was unlawful and lifting of the veil of the 1st Respondent amongst other reliefs.
2. The Respondents appointed the Firm of Owang & Associates Advocates to act for them in the matter, but other than the notice of appointment filed on 26th January, 2021, nothing else was filed on behalf of the Respondents. The court directed that the matter proceeds by way of formal proof.
3. The matter was heard on 3rd November, 2021. The Claimant testified in support of his case and adopted his witness statement as his evidence in the matter.

The Claimant's Case

4. The Claimant's case is that he was appointed as a site agent consultant by the 1st Respondent, to repair Maseno Kombewa road on a monthly gross salary of Kshs. 270,709/=.
5. It is his case that he started working for the Respondents on 1st April, 2019. He states that four months into his two-year contract, the 1st Respondent started experiencing challenges but that they continued to work with the assurance by the 3rd Respondent that the situation was being addressed and will be resolved.
6. It is his case that he entered into a formal agreement with the 3rd Respondent, to use his vehicle for the works of the 1st Respondent and in return to be paid Kshs. 90,000/- per month. He states that he took a loan facility to repair his car so as to make it serviceable for purposes of the Respondents' work, as had been agreed. It is his further case that the Respondents did not pay him for the car and was thus not able to service the loan.
7. It is his case that he visited the offices of the Kenya Rural Roads Authority where he received a letter terminating his services with the Respondents. It is his further case that the letter terminating his services had been written five months' earlier and had he not visited the Kenya Rural Roads Authority offices, he would have continued working oblivious of his termination.
8. The Claimant prays that this court awards him four (4) months' unpaid salaries, one-month salary in lieu of notice, the cost of hiring his motor vehicle, salary for the unexpired term of his contract and payment for the value of his motor vehicle that had been repossessed for failure to service the loan.

Determination

9. The issues for determination in the matter are:

- i. Whether the Claimant was unfairly terminated
- ii. Whether the Claimant is entitled to the reliefs sought
- iii. Who bears the costs of the suit.

Whether the Claimant was unfairly terminated

10. The Claimant's case is that he was appointed to the service of the Respondents on 1st April, 2019 and terminated in August, 2019. The bundle of documents produced by the Claimant in support of his case, are a letter of offer, contract of employment, documents describing the assignment, termination letter, a pay slip and documents relating to the loan facility.

11. The letter of appointment dated 1st April, 2019, is not signed by both parties to the contract. Though the letter has spaces for both parties' signatures and their witnesses, the letter has not been signed by any of the parties nor their witness. In my view, the letter herein is not authentic and is not proof of a contract of employment between the parties herein. Further, although the list of documents indicates that there is a letter of offer, there is actually none in the court record.

12. Secondly, the documents produced and said to describe the Claimant's assignment, bear two rubber stamps; one said to belong to the 1st Respondent and another belonging to **Hayer Bishan and Sons Ltd**, who is not a party to this suit. Nothing from this document links the Claimant to the Respondents.

13. Thirdly, the pay slip produced in evidence in this matter, is for the month of October, 2020 and does not have a name of either the person being paid, or the entity making the payment. One cannot say that the pay slip belongs to the Claimant and that it was issued by any of the Respondents herein. Moreover, the Claimant's case is that he was terminated in August, 2019, yet the pay slip produced in evidence is for October, 2020.

14. The letter being referred to as a termination letter, is addressed to a third party as the Claimant rightly submitted, and although it indicates the Claimant's termination date, it is neither addressed to the Claimant nor copied to the Kenya Rural Roads Authority. The court is left wondering how the letter came into the possession of the Kenya Rural Roads Authority where the Claimant is said to have picked it from.

15. In my view, although the letter indicating the Claimant's date of termination is before court, I am still of the opinion that the Claimant knows more in relation to the termination of his employment than he has told the court.

16. I find and hold that the Claimant as the burden bearer, has not proved on a balance of probability, that he was an employee of the Respondents and has further not told the court the circumstances under which he was terminated.

Whether the Claimant is entitled to the reliefs sought

17. The Claimant's claim is for payment of four (4) months' unpaid salaries, one-month salary in lieu of notice, the cost of hiring his motor vehicle, salary for unexpired term of his contract and payment for the value of his motor vehicle that had been repossessed for failure to service the loan

Unpaid Salaries, one-month salary in lieu of notice, salary for unexpired term of his contract

18. The Claimant has not proved on a balance of probability that he was an employee of the Respondents. The reliefs herein are tied to him having proved being an employee of the Respondent. The claims fail and are dismissed.

Car hire and payment for the value of his motor vehicle

19. The loan agreement with Platinum credit according to the evidence before court, was entered into on 22nd March, 2019, while the Claimant's employment with the Respondents is said to have begun on 1st April, 2019.

20. This loan was evidently not taken pursuant to the alleged agreement with the 3rd Respondent, as the time when the loan facility was drawn, is time before the period the Claimant alleges to have been in the service of the Respondents.

21. The Claimant's case was that he entered into a formal agreement with the 3rd Respondent to hire his car to the 1st Respondent at KShs. 90,000 per month. The agreement referred to herein was not produced in evidence before this court. These claims lack merit and are dismissed.

22. In conclusion, the Claimant's claim dated 4th January, 2021 is dismissed in totality.

23. The Respondents did not defend the suit. For this reason, I make no orders as to costs.

24. Judgment accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 27TH DAY OF JANUARY, 2022.

CHRISTINE N. BAARI

JUDGE

Appearance:

Ms. Omondi Present for the Claimant

N/A for the Respondent

Christine Omollo- C/A