



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT ELDORET**

**CAUSE NO 383 OF 2017**

**YAVUSUMBA DAVID NYONGESA.....PLAINTIFF**

**VERSUS**

**WEST KENYA SUGAR CO. LTD.....DEFENDANT**

**J U D G E M E N T**

1. By a memorandum filed on 19<sup>th</sup> December, 2017, the claimant averred that he was employed by the respondent as a general labourer at the material time and his services unfairly terminated by respondent. According to the claimant, he was to work for the respondent and was to be paid as agreed on daily basis.
2. The claimant further averred that during his employment he worked overtime without pay and during public holidays but was never paid.
3. The respondent on its part denied the claimant was its employee as alleged. The respondent further denied there was any agreement on payment of dues as alleged.
4. The respondent further stated that the claimant was not entitled to the declarations sought in the claim further that during the employment the claimant worked overtime without pay and that he worked during rest days without pay.
5. The respondent in the alteration stated that if at all the claimant was recruited as alleged, he was the idle author of his misfortune and or contributed to the same hence his blame can be attributed to the respondent. The respondent further averred that the claimant was paid all his dues upon termination.
6. At the trial, the claimant adopted his witness statement filed on 19<sup>th</sup> December, 2017 as his evidence in chief. He stated that he worked from June, 2018 until May, 2017 and that upon termination he was not given any reason. It was his evidence that he was held to go home will be called but was never called. He consulted his advocate who issued a demand letter on the issue.
7. The claimant further stated that they used to be issued with gate passes that were valid for one month. Hassan was his supervisor and that he was also supervising other staff and that Hassan was the overall supervisor. When there was no sugar only supervisors were allowed in to cleared pack sugar.
8. Concerning his salary, he stated that his monthly salary was Ksh. 8,000/= and that they were paid twice a month in cash. The claimant denied knowledge of Mr. Adika and Mr. Muchunu was the one in charge of Human Resource where he worked. He denied learning work on his own. Further that he was employed by respondent and did not know about the contractor. In cross-examination he stated that he had one gate pass which he relied on as proof of employment. The gate pass was written "contractor" casual gate pass. It was further his evidence that he was a casual and was invited to work by Mr. Hassan who became his supervisor and allocated him duties.
9. The claimant stated his salary was paid West Kenya through Hassan. He denied knowledge of Mr. Andika and further stated that the respondent terminated his service and that it was Hassan who called him but never told him not to come back to work.
10. If it was claimant's evidence that the security officer took his number and said he would be called.
11. The respondent's 1<sup>st</sup> witness Mr. Dennis Adika informed the court that he was Human Resource and Administration Manager for the respondent. He adopted his witness statement dated 30<sup>th</sup> July, 2018 as his evidence in chief.
12. It was his evidence that the claimant was not clearly known to him but that he had never been an employee of the respondent.

13. Concerning the gate pass, he stated the one the claimant had was not the one issued by the respondent. According to him ordinarily gate passes would have the logo of the respondent indicating the premises the employee is permitted to access.

14. It was Mr. Adika's evidence that on 1<sup>st</sup> January 2017 the factory was out of the cane and was closed from November 2016 to March, 2017. There was therefore no contractor to pack sugar in the factory.

15. In cross-examination he stated that he was employed on 26<sup>th</sup> February, 2017 and that he took over from Mr. Michumo. He inherited proper records from the respondents and used the same to write his statement. According to him, there were no employment records for the claimant.

16. It was Mr. Adika's evidence that the gate pass was invalid because during the period it was allegedly issued, the factory was undergoing major maintenance and only maintenance staff were working. He further stated that Hassan Busuku was a contractor for packing sugar contracted by the respondent.

17. The respondent's second witness Mr. Hassan Busuku informed the court that he packages sugar for the respondent on contracts and that he knew the claimant as one of his casual workers and that he worked for one week. He further stated that the respondent never dismissed the claimant and that he was one who gave names of those to be issued with gate passes. The gate pass before the court was not the one issued by the respondent.

18. In cross – examination he stated that he was not an employee of the respondent and that claimant was under him.

19. The duty was on the claimant to prove that his service was terminated unfairly by the respondent. The claimant alleged that he was in May, 2017 told to go home and would be called back to work. The claimant stated that it was Mr. Hassan who called him but Hassan was not the one who told him to go away and wait to be called. The court however noted that the claimant was evasive and could not specify who in particular from the respondent told him to go home and wait to be called.

20. The respondent on the other hand denied the claimant was its employee and that the period the claimant alleged he worked for factory was closed for maintenance hence there was no sugar to pack. The respondent further called as witness Mr. Hassan Busuku who informed the court that he was contracted by the respondent to pack sugar and the claimant was one of his casual workers. The claimant confirmed this and stated that it was indeed Mr. Hassan who called him to work and was his supervisor.

21. From the foregoing disclosures it would seem there was no employer -employee relationship between the claimant and respondent to confer jurisdiction upon the courts to adjudicate the dispute. The claim ought to have been brought against Mr. Hassan Busuku and that the respondent.

22. In conclusion the court finds the claim incompetent and the same is hereby dismissed with costs.

23. **It is so ordered.**

**DATED AND DELIVERED THIS 4TH DAY OF FEBRUARY, 2022**

**ABUODHA NELSON JORUM**

**JUDGE**