



REPUBLIC OF KENYA



KENYA LAW
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**Muda v Seed of Orphanage (Cause 4 of 2019)
[2022] KEELRC 13442 (KLR) (7 December 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13442 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KITALE**

CAUSE 4 OF 2019

NJ ABUODHA, J

DECEMBER 7, 2022

BETWEEN

PETER EROYAN MUDA CLAIMANT

AND

SEED OF ORPHANAGE RESPONDENT

JUDGMENT

1. By a Memorandum of claim filed in court on 18th October, 2019, the claimant averred that he was employed by the respondent on 1st March 2013 in the capacity of day and night watchman with a payment salary of Kshs 4,500 per month.
2. He stated that on 28th February 2018, the Respondent unlawfully and unfairly terminated the claimant from employment.
3. The claimant's claim therefore, against the respondent was for the followings reliefs which I quote verbatim ;
 - a. A declaration that the Respondent action of dismissing the claimant from employment was illegal, unlawful, unfair and wrongful
 - b. Compensation of his entitlement of 12 months' salary being compensation for unlawful termination of employment
 - c. Compensation of his entitlement of one month salary lieu notice
 - d. Compensation of his entitlement of 105 days in lieu of leave days not taken for 5 years
 - e. Compensation of his entitlement of severance pay for each completed year
 - f. Compensation of his entitlement of overtime for Monday to Saturday for 5 years



- g. Compensation of his entitlement of overtime for public holidays worked 5 years
 - h. Compensation of his entitlement of costs and interest of this claim(sic)
 - i. Any other relief that the court deems fit to grant.
4. The respondent filed a response on 4th December 2019 and denied the claim. In it, the Respondent denies that the Claimant was its employee.
 5. At the trial, both parties gave evidence. The claimant testified on 24th March 2022 as Cw1 and adopted his witness statement recorded on 18/10/2019 as his evidence in chief. He largely reiterated his case that he was terminated unfairly and unprocedurally by the respondent and that further, he was not paid his terminal dues.
 6. The Respondent called one Francis Simiyu its manager who testified on 28th July 2022 as RW1. RW1 adopted his witness statement recorded on 4th December 2019 as his evidence in chief and affirmed the Respondent's case that the Claimant was never its employee.
 7. At the close of the defence case, the court directed the parties to file written submissions. The Respondent filed its submissions on 23rd September 2022. I have perused the record and I seem not to find submissions by the Claimant.

Determination

8. From the pleadings, the evidence and the submissions on record, I find that the issues for determination are;
 - i. Whether the claimant was an employee of the Respondent?
 - ii. What reliefs if any, avail to the Claimant?
9. On whether the Claimant was employed by the Respondent, the Claimant maintained that he was employed on 1st March 2013 as watchman/guard whereas the Respondent has denied this averment.
10. I must mention that no documentation was tendered before court by the claimant to prove that indeed he was employed by the Respondent.
11. It is trite law that whoever alleges must prove and the Claimant in this case had the onus to prove his case on a balance of probability and in particular, that he was actually an employee of the Respondent which he failed to do.
12. In view of the foregoing, I find that the Claimant has failed to prove his case on a balance of probability to the effect that he was employed by the Respondent between 1st March 2013 and 28th February 2018.
13. It therefore follows that the Claimant did not establish the existence of employment relationship between him and the Respondent and as such the claim fails.
14. The claim is therefore found without merit and is hereby dismissed with costs.
15. It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 7TH DAY OF DECEMBER, 2022

ABUODHA NELSON JORUM

JUDGE ELRC

