



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAIROBI
CAUSE NUMBER 1024 OF 2016
BETWEEN
JERIM OWUOR ODHIAMBO.....CLAIMANT
VERSUS
1. THE CHAIRMAN, MATHARE UNITED CLUB
2. THE TREASURER, MATHARE UNITED CLUB.....RESPONDENTS

Rika J

Court Assistant: Emmanuel Kiprono

Diro & Company, Advocates for the Claimant.

No appearance of the Respondents

JUDGMENT

1. Through his Amended Statement of Claim filed on 17th June 2016, the Claimant states he was employed by the Respondents in June 2012, as Deputy Coach, Mathare United Football Club.
2. The original Claim was filed on 31st May 2016.
3. He states he worked until, or around, 1st June 2013, when he was forced out of employment through frustrations.
4. It had been agreed that he would be offered a written contract. None was offered. He was offered a monthly salary of Kshs. 45,000. It was not paid in full.
5. Between July and December 2012, the Respondents owed him Kshs. 235,000. Between January and June 2013, his whole salary of Kshs. 270,000 was withheld. He could not make ends meet. He was not provided with housing accommodation. He was not paid housing allowance. He never went on annual leave. He did not receive pay in lieu of annual leave.
6. He prays for Judgment against the Respondents for:
 - a. Certificate of Service.
 - b. Arrears of salary at Kshs. 505,000.
 - c. 1-month salary in lieu of notice at Kshs. 45,000.

d. House allowance for 13 months at 15% of the basic salary, at Kshs. 87,750.

e. 12 months' salary in compensation for unfair termination at Kshs. 540,000.

f. Costs and interest.

7. The Respondents were served with the Statement of Claim and Notice of Summons, as indicated in the Affidavit of Service. They did not file Response. The matter proceeded by way of formal proof, on 19th February 2021.

8. The Claimant, in his evidence, restated the contents of his Pleadings, as summarized at the outset in this Judgment.

The Court Finds: -

9. There is no Response filed by the Respondents.

10. There is no counterevidence, to dispute the evidence given by the Claimant.

11. It is established that he was employed by Mathare United Football Club as Deputy Coach, in June 2012. His salary of Kshs. 45,000 a month, was paid inconsistently. He was owed Kshs. 505,000 in arrears of salary, by the time he left employment. He has exhibited schedules of Employees who were owed arrears of salaries by Mathare United Football Club, and the amounts due. He was listed among these creditors. He left employment owing to non-fulfilment of contractual obligations on the part of the Respondents. In addition to lack of salary, the Claimant was denied housing or house allowance; and he was not granted annual leave or pay in lieu of annual leave.

12. The Court does not think that he merits notice and compensation. He left employment of his own volition. Termination was not instigated by the Respondents. Non-payment, or delay in payment, of contractual dues does not necessarily amount to termination of the contract, at the instance of the Employer. The Claimant did not explain to the Court why he could not make his demands, or even file the Claim for recovery of dues, while still in employment. Most football clubs in Kenya do not make ends meet. This is a fact commonly and widely reported in the media. It is a fact this Court takes judicial notice of. The clubs are constantly in debt, and delay in meeting of staff salaries, is expected. It cannot be taken as repudiation of contract by the Employer, every time it happens. These clubs only have debt relief, when they meet benefactors, who mostly happen to be gambling houses, whose operations are frequently being curtailed by the Authorities. Gaps in financing of our football clubs become inevitable. The Claimant must have known at the time he was recruited as Deputy Coach, that Mathare United Football Club is not Manchester United Football Club, with the financial wherewithal to consistently pay the salary of its Deputy Coach, as and when it falls due. He does not merit compensation for unfair termination. He does not merit notice. He initiated termination. He has not shown that he was constructively dismissed.

13. He is allowed the other prayers.

IN SUM, IT IS ORDERED: -

a. The Respondents shall pay to the Claimant: arrears of salary at Kshs. 505,000; and, house allowance at Kshs. 87,750 – total Kshs. 592,750.

b. Certificate of Service to issue.

c. Costs to the Claimant.

d. Interest allowed at the rate of 16% per annum from the date of Judgment till payment in full.

DATED AND SIGNED AT CHAKA, NYERI COUNTY, UNDER MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 9TH DAY OF APRIL 2021.

James Rika

Judge