



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO 1459 OF 2016

KRISHNA KANDIMALLA.....CLAIMANT

VERSUS

MOBILE ASSET TRACKING LIMITED.....1ST RESPONDENT

DHANUSH INFOTECH LIMITED.....2ND RESPONDENT

JUDGEMENT

1. The claimant vide a statement of claim filed before this Court on 26th July, 2016 sued for the sum of USD 9,000 being unpaid terminal benefits. He also prayed for general damages, punitive damages, interests and costs.
2. In his statement of claim, the claimant stated that he was employed as an Operations Manager by the 1st Respondent. He worked for a period of 2 years or thereabout before the employment was terminated mutually on 22nd May, 2014.
3. The Claimant averred in his memorandum of claim that the 2nd Respondent is a sister company to the 1st Respondent.
4. The 2nd Respondent disputed the employment relationship and averred that that the Claimant was a shareholder of the 1st Respondent hence was only entitled to dividends at the end of the year as opposed to wages.
5. The 1st Respondent did not enter appearance nor file a statement in response to the claim.
6. On 17th March, 2021, the 2nd Respondent's counsel Lubullelah & Co. Advocates filed an Application to cease acting. This application was allowed on 4th May, 2021 hence the Respondents were unrepresented by Counsel at the time the matter proceeded for hearing on 11th August, 2021.
7. On the date of the hearing, the Respondents were absent in court despite being served with the hearing notice as appropriate. The court being satisfied with the return of service, proceeded to hear the claimant's case in absence of the Respondents.
8. The Claimant testified that he was offered employment by the 1st Respondent vide an offer of employment letter dated 10th December, 2012. He stated that he accepted the same on 17th December 2012 by appending his signature. He further averred that the 1st Respondent facilitated his work permit which he produced before court. It was also the claimant's testimony that the employment relationship was terminated mutually and to that end, he produced a clearance certificate signed between him and the 1st Respondent.
9. It was his testimony that as per the clearance certificate, he was to be paid terminal benefits in the sum of USD 18,000 which was payable by the 2nd Respondent way of cheque. That he was issued with 6 postdated cheques in the names of the 2nd Respondent but he only managed to cash 3 cheques in the sum of USD 9,000 since the 3 other cheques were dishonored on account of insufficient funds. It was also his testimony that he brought up the issue with the Respondents, who promised to make amends but no resolution was forthcoming. To this end, he produced emails evidencing his communication with the 1st Respondent. He prayed for the sum of USD 9,000/= being the balance of his terminal dues.

Submissions

10. The claimant filed his written submissions through his Advocates through which he reiterated the averments in the statement of claim and witness statement. He prayed for general and aggravated damages in addition to the outstanding terminal dues.

Issues for determination

11. From the pleadings and submissions before Court, the issues falling for the court's determination are:

- a. Whether there was an employment relationship between the claimant and the 1st Respondent?
- b. Whether the Claimant's terminal dues were paid?

Whether there was an employment relationship between the claimant and the 1st Respondent?

12. The claimant has averred that he was an employee of the 1st Respondent. To support his assertion, he has produced an offer of employment letter dated 10th December, 2012.

13. I have perused the said offer of employment letter which is titled "letter of offer" and note that the same was issued by the 1st Respondent and it is addressed to the Claimant who accepted the same by appending his signature just above where his name appears.

14. The said letter of offer reads in part as follows;

"pursuant to our discussions we had with you earlier, we are pleased to make you an offer to join Mobile Asset Tracking LTD as a Director on employment basis.....you will be entitled to a gross monthly salary of USD 1500 (US Dollars One Thousand Five hundred only..."

15. The role of the Court is to interpret the contract between parties. In this case, the offer letter clearly states the intention of the parties which was, to enter into an employment relationship. It is in black and white that the Claimant was being contracted to join the employment of the 1st Respondent as a Director.

16. Indeed, the clearance certificate which mutually terminated the Claimant and the 1st Respondent's employment relationship clearly provides as follows in part **"I Krishna Kandimalla hereby declare that I have willingly requested to be relieved from the employment of Mobile Asset Tracking Limited..."**

17. Section 2 of the Employment Act (EA) defines an Employee to mean **a person employed for wages or a salary and includes an apprentice and indentured learner.**

18. Section 2 of the EA proceeds to define an employer as **any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company.**

19. In the instant case, the Claimant was engaged as Director, and in consideration thereof, he was to earn salary in the sum of USD 1500. I thus find that he fits the definition of "employee" in terms of the EA.

20. On its part, the 1st Respondent being a corporation, entered into the contract of employment with the Claimant. In any event, the 1st Respondent did not enter appearance nor file a response to dispute the employment relationship.

21. Further, the parties used the term "employment" at the point their relationship commenced and at the determination thereof.

22. The 2nd Respondent has disputed the employment relationship between the Claimant and the 1st Respondent but has not produced any evidence to the contrary. Despite claiming that the Claimant is a shareholder of the 1st Respondent company, the 2nd Respondent failed to produce a Shareholder Agreement or any document for that matter to prove its assertion.

23. On its part, the Claimant has proved the existence of the employment relationship through the Letter of Offer which he executed with the 1st Respondent.

24. To this end, I find that the Claimant has proved that he was indeed an employee of the 1st Respondent.

Whether the claimant's terminal dues were fully paid?

25. The Claimant has produced the clearance certificate by which the employment relationship was terminated. The said certificate of clearance provides that the Claimant will be paid USD 18,000 as terminal dues and benefits including leave days encashment. The claimant has stated that out of the sum payable, he only received half of it since 3 Cheques were dishonored by the bank. The dishonored cheques were produced before court as evidence in support of the Claimant's assertion.

26. I have perused the cheques and note that the cheques were not cleared by the Bank and they all bear the following words **"insufficient funds-refer to Drawer"**.

27. This proves that the cheques were not cashed hence the Claimant did not receive any money as agreed in the clearance certificate. Further

the Claimant produced emails exchanged with the 2nd Respondent in regards to the outstanding payment. In one of the emails of 4th June 2015, one Mr. Venkatesh Natarajan from the 2nd Respondent has stated as follows; “**we are looking at the following timelines to clear your pending amounts...**”

28. It is therefore clear from the emails that the 2nd Respondent acknowledges the pending payment and promises to resolve the issues. Clearly, payment was not made hence this claim.

29. From the foregoing, I can infer that the clearance certificate provided for the Claimant’s terminal dues in the total sum of USD 18,000 and that he was issued with cheques as payment thereof and that he could not cash the same as they were dishonored by the bank.

30. I thus find that the Claimant has proved that his terminal dues in the sum of USD 9,000 is outstanding and thus payable jointly and severally by the Respondents.

31. In the circumstances, I enter Judgment for the Claimant in the sum USD 9,000 together with interest from the date the suit was filed.

32. The Respondents shall bear the costs of the suit.

DATED,SIGNED AND DELIVERED AT NAIROBI THIS 15THDAY OF OCTOBER, 2021

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STELLA RUTTO

JUDGE

Appearance:

For the Claimant Mr. Wachira

For the Respondents No appearance

Court assistant Barille Sora

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2) (d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE