



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI
CAUSE NO.1210 OF 2016

PHILLIP RIUNGA MATEMACLAIMANT

VERSUS

BROAD NETWORK TRANSPORTERS LIMITEDRESPONDENT

JUDGEMENT

On 9th October, 2015 the claimant was employed by the respondent as a supervisor under an oral agreement at a wage of Ksh.20, 000 per month but at month end he was only paid Ksh.15, 000.

The claimant was promoted to security manager and the wage increased to ksh.25, 000 per month.

In November, 2015 the claimant was not paid his wages and in January, 2016 he discovered that the director, Gerald Kirembi Mugambi had closed its offices and did not resume operations. His outstanding dues were never paid.

The claimant is seeking payment of the following;

- a) Ksh.5,000 underpayment in October, 2015;
- b) Wages for November and December 2015 all at ksh.50,000;
- c) Notice pay Ksh.25,000;
- d) House allowance Ksh.11,250;
- e) Leave days Ksh. 1,666;
- f) Service pay;
- g) Certificate of service.

The claimant is also seeking payment for unfair termination of employment.

The claimant testified in support of his case.

The defence is that the claimant was never an employee of the respondent and the documents produced are forgeries and not signed. Demand was made but the respondent denied employment and the claims made are not justified.

No evidence was called by the respondent who remained absent at the hearing.

Only the claimant filed written submissions.

Determination

Section 8, 9 and 10 of the Employment Act, 2007 (the Act) allow for an oral or a written contract of employment.

Under section 10 of the Act, upon an employee filing suit with the court, the duty to produce work records to prove or disapprove

employment is placed upon the employer.

The respondent having submitted to the jurisdiction of the court, upon being served with the summons herein, all employment records to prove or disapprove employment of the claimant should have been produced.

The court must believe the claimant with regard to the terms and conditions of his employment. The oral contract and the terms thereof apply in the absence of the respondent meeting the duty vested by law.

Without call of any evidence, employment terms outlined by the claimant are not challenged.

Underpayment of wages is an unfair labour practice. Refusal to pay wages for work done is unlawful. To terminate employment without notice, payment in lieu thereof is unlawful under the provisions of section 35, 41 and 45 of the Act. Such malpractice is compensated pursuant to section 49 of the Act.

The court finds the claimant was an employee of the respondent, there was unfair termination of employment and his terminal dues were not paid.

The claimant worked for 3 months only and a notice pay shall address the unfairness all at ksh.25, 000.

The claim for underpayment and non-payment of wages is not challenged and these are due.

The claim for house allowance is on the basis that the claimant was last as security manager save without a contract of employment, the terms of service are casual and the wage rates for a casual employee as of the year 2015, the payment of ksh.25, 000 per month was generous.

To claim over and above such rate is unjust enrichment.

The claim for 2 days of leave is not addressed as to what period of employment accrued such 2 days.

Service pay is only due upon service for a full years.

Certificate of service is due whatever the reasons leading to termination of employment.

Accordingly, the claim herein is found with merit and judgement herein entered for the claimant against the respondent in the following terms;

- (a) Notice pay at Ksh.25,000;**
- (b) Underpayment Ksh.5,000;**
- (c) Unpaid wages Ksh.50,000;**
- (d) A certificate of service shall issue;**
- (e) Dues at (a), (b) and (c) shall be paid subject to section 49(2) of the Employment Act, 2007.**
- (f) Each party shall bear own costs.**

DELIVERED IN OPEN COURT AT NAIROBI THIS 14TH DAY OF OCTOBER, 2021.

M. MBARU

JUDGE