



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

CAUSE NO 481 OF 2017

MOHAMED ALI LIWASSA.....CLAIMANT

VERSUS

RANDA COACH LIMITED.....RESPONDENT

JUDGMENT

Introduction

- 1. Before me is an employment dispute between Mohamed Ali Liwassa and Randa Coach Limited. Liwassa brings his claim by way of a Memorandum of Claim dated 19th June 2017 and filed in court on the same date.
- 2. The Respondent was duly served but chose not to respond to the Claimant’s claim.

The Claimant’s Case

- 3. The Claimant states that he was employed by the Respondent initially as a Cleaner on 5th January 2014 and later in the higher position of Parcel Clerk from 1st August 2015.
- 4. The Claimant worked for the Respondent until 28th February 2017 when his employment was terminated. At the time of termination, the Claimant earned a monthly salary of Kshs. 10,000.
- 5. The Claimant further states that on 28th February 2017, he reported to work as usual. He was called by one of his bosses, one Mr. Suleiman who told him that his employment had been terminated because he had stolen money from the Respondent.
- 6. The Claimant’s case is that the termination of his employment was unlawful and unfair, for the reason that there was no justifiable cause for it and he was not accorded an opportunity to defend himself. The Claimant adds that he was not allowed to go on leave and was not given any off day.
- 7. The Claimant now claims the following from the Respondent:

- a) Salary for February 2017.....Kshs. 10,000
- b) One month’s salary in lieu of notice.....10,000
- c) Leave pay for 2 years & 2 months.....21,700
- d) 12 months’ salary in compensation.....120,000
- e) Certificate of service
- f) Costs plus interest

Findings and Determination

- 8. The Respondent did not respond to the Claimant’s claim and there was therefore no admission on any of the issues before the Court, including the existence of an employment relationship between the parties.

9. Apart from his word, the Claimant filed a copy of staff card apparently issued by the Respondent. However, a scrutiny of this card reveals that it was issued on 22nd January 2016 and was to expire on 21st January 2017.

10. It would appear therefore as at 28th February 2017, the date the Claimant pleads as his termination date, his staff card had expired. The Claimant was thus required to provide evidence that he was an employee of the Respondent on the date he claims to have been terminated. He failed to do so and his word was therefore unsupported and unverified.

11. The Employment and Labour Relations Court exercises specialised jurisdiction. With regard to employment matters, the first thing a Claimant is required to prove is the existence of an employment relationship, capable of enforcement by the Court.

12. Even where the employment relationship is not documented, the Claimant ought to call independent evidence to corroborate their word that they were actually employees of the Respondent. This is important because the existence of an employment relationship is a matter of fact and law and not every work relationship translates into an employment relationship.

13. In this case, the Claimant failed to discharge his evidential burden and the Court finds that the existence of an employment relationship between him and the Respondent has not been established.

14. That being the case, there is no basis for any of the claims before the Court.

15. The Claimant's entire claim therefore fails and is dismissed with no order for costs.

16. It is so ordered.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 5TH DAY MARCH 2020

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JUDGE

Appearance:

Miss Adagi h/b Ngure for the Claimant

No appearance for the Respondent