



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

CAUSE NO 671 OF 2015

SAFARI KARISA.....CLAIMANT

VS

CORRUGATED SHEETS LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. What is before the Court is an employment dispute between Safari Karisa and Corrugated Sheets Limited.
2. The Claimant states his case in a Memorandum of Claim dated 1st September 2015 and filed in court on 2nd September 2015. The Respondent filed a Memorandum of Defence on 11th November 2015.
3. The matter proceeded to full trial where the Claimant testified on his own behalf. The Respondent called Suleiman Khamis Issy.

The Claimant's Case

4. The Claimant states that he was employed by the Respondent as a loader in March 1995. He claims to have been employed on casual basis but adds that he retained continuous and uninterrupted employment until 15th April 2015.
5. The Claimant further states that he was paid a daily rate of Kshs. 250 which was later adjusted to Kshs. 400.
6. The Claimant avers that on 15th April 2015, he reported to work as usual but was summoned by the Respondent's Sales Manager, Mr. Mkeshi who instructed the Claimant to go back home as there was no more work for him.
7. The Claimant adds that he was told by Mkeshi to wait to be called back to work. The Claimant was however not called back and therefore deemed his employment to have been terminated.
8. The Claimant now lays a claim for unlawful and unfair termination of employment, on the grounds that there was no valid reason for the termination and further that he was not allowed an opportunity to be heard.
9. The Claimant also claims that he was not registered under any pension scheme or provident fund under the Retirement Benefits Act, a gratuity or service scheme established under a collective agreement.
10. The Claimant now claims the following from the Respondent:

- a) One month's salary in lieu of notice.....Kshs. 12,235.60
- b) Leave pay for 20 years.....197,652.00
- c) Underpayment from May 2013.....44,180.00
- d) Service pay @ 15 days' pay per completed year.....141,180.00
- e) 12 months' salary in compensation.....146,827.20

f) Certificate of service

g) Costs plus interest

The Respondent's Case

11. In its Memorandum of Defence dated 5th November 2015 and filed in court on 11th November 2015, the Respondent denies ever employing the Claimant as its employee.

12. The Respondent states that the Claimant was hired by an independent contractor, one Ali Salim Mwakenyezi. The Claimant was paid for each completed job per day.

13. The Respondent further states that it never hires any employee as a loader as the services are outsourced.

14. The Respondent maintains that there was no contract of service between itself and the Claimant for the following reasons:

a) The Respondent never deducted any tax or other statutory deductions from the Claimant as this was an obligation imposed on the Claimant hired under a contract for services by the independent contractor;

b) In execution of the contractual obligations, the Claimant was not controlled or directed by the Respondent and was never given targets or expectation by the Respondent.

15. The Respondent denies the Claimant's entire claim on the ground that there was no employment relationship, capable of enforcement by this Court.

Findings and Determination

16. The first issue for determination in this case is whether there was an employment relationship between the Claimant and the Respondent.

17. The Claimant claims to have been employed by the Respondent as a loader from May 1995 until 15th April 2015.

18. On its part, the Respondent denies ever employing the Claimant and states that the Claimant was hired by an independent contractor, one Ali Salim Mwakenyezi, who was engaged by the Respondent.

19. The question whether there was an employment relationship between the Claimant and the Respondent is central to the Claimant's claim. It was therefore incumbent upon the Claimant to call independent evidence to support his word that he was an employee of the Respondent.

20. He failed to do so and his claim therefore fails for want of evidence.

21. Each party will bear their own costs.

22. Orders accordingly.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 27TH DAY OF JULY 2020

LINNET NDOLO

JUDGE

ORDER

In view of restrictions in physical court operations occasioned by the COVID-19 Pandemic, this judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of court fees.

LINNET NDOLO

JUDGE

Appearance:

Miss Mboku h/b for Mr. Mbuya for the Claimant

Miss Chepkurui h/b Mr. Onyony for the Respondent