

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT MERU

CAUSE NO. 9 OF 2017

ADAN ROBA.....CLAIMANT

VERSUS

SUMMER DISTRIBUTORS LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant sued the Respondent his former employer and averred that he worked as a watchman for the Respondent from 2004. He further averred that being an illiterate person, in July 2016 he was made to sign documents which he later learnt indicated that he had resigned from employment due to illness or ill health. He averred that upon removal from office he visited the Labour Office for a tabulation of the dues he was entitled to which were tabulated as house allowance for 14 years – Kshs. 320,400/-, overtime for 14 years – Kshs. 558,190/-, terminal benefits – Kshs. 72,684/- making a grand total of Kshs-. 933,274/-. He attached to his claim the tabulation by the Labour Officer's tabulation and two demand letters from the advocates representing him.

2. Upon service of the claim the Respondent filed a defence in which it averred that the Claimant resigned on 14th July 2016 on grounds of ill health upon recommendation of his doctor. The Respondent averred that upon resigning he sought the help of the Kenya Building and Construction, Timber & Allied Industries Employees Union who together with the Respondent worked out the Claimant's terminal dues which were released promptly to the Claimant and acknowledged. The Respondent averred that it was not indebted to the Claimant at all or as alleged and denied the averments of the Claimant in toto. The Respondent averred that the claim was misconceived, without merit and amounting to an abuse of the court process reasons wherefore the Respondent sought the dismissal of the Claimant's claim with costs. To the defence filed, the Respondent attached the resignation letter, the letters from the Kenya Building and Construction, Timber & Allied Industries Employees Union dated 5th July 2016, clearance letter tabulating his dues, the demand letters from his advocates as well as the Respondent's advocate's reply and the Claimant's discharge.

3. The Claimant testified and was cross-examined but the Respondent's witnesses did not. The Claimant in brief stated that he worked for the Respondent from 2004 and that he left employment in 2016. He testified that he was dismissed in 2016 and paid Kshs. 137,000/- though he was entitled to Kshs. 933,274/-. He stated that he never got any off days and that he worked from Monday to Sunday. In cross-examination he stated that that he was dismissed by the manager after he told the manager he was unwell. He testified that he did not have the dismissal letter. He denied approaching the Kenya Building and Construction, Timber & Allied Industries Employees Union and indicated there was no letter he wrote to the Union. He stated that the letter of resignation was written by the manager who told him to sign the letter. He testified that the Union officials were present when he received the payment including the witness Abdi Jarso and Charles who was the Union secretary was in attendance. He was re-examined and he stated that the sum he was given was insufficient.

4. The Respondent's witness and the Claimant's last witness failed to attend court during the further hearing scheduled by the Court despite the same being via Microsoft TEAMS which is the online platform in place for hearing of cases. The case was closed and parties directed to file final submissions and each filed their submissions.

5. The Claimant submitted that was employed by the Respondent and was unfairly terminated by the Respondent. He submitted that he was not paid the rightful dues upon his unlawful and unfair dismissal. The Claimant thus sought the payment of the sum of Kshs. 933,274/- as the rightful terminal dues.

6. The Respondent in its submissions submitted that the Claimant's case was unsubstantiated as the Labour Officer who was to produce the tabulation relied on by the Claimant failed to attend Court and produce the document. The Respondent submitted that having failed to produce a document that formed the bedrock of the claim was never produced as an exhibit and that the Claimant's testimony in the dock left more questions than answers. The Respondent urged the Court to consider the statements of its witnesses even though they did not testify and the pleadings by the Respondent as the defence to the claim. The Respondent submitted that the Claimant had failed to prove his case and the case should be dismissed as it was not proved on a balance of probabilities.

7. The Claimant was an employee of the Respondent. Of that there can be no doubt. The Respondent urged the Court to disregard the document filed by the Claimant which document was not produced by the maker while on the other hand urging the Court to consider the evidence for the defence which was also not produced or testimony received. It is waxing both hot and cold and the same standard applies to both the Claimant and the Respondent. The Court is empowered under Rule 21 of the Employment & Labour Relations Court (Procedure) Rules 2016 to determine a matter solely on the basis of pleadings and documents presented by the parties. As such the argument by the Respondent is without foundation as there is basis to make a determination in this case based on the material both parties presented.

8. It is asserted that the Claimant resigned from employment and for this, the Respondent produced the resignation letter. In the letter the Claimant is shown to have presented a medical report which formed the basis of his resignation and the tabulation of his dues included a representative of the Kenya Building and Construction, Timber & Allied Industries Employees Union. It would seem the Claimant was dissatisfied by the payment and thus sought to mount this claim. He sought a sum of Kshs. 933,274/- made up as house allowance for 14

years – Kshs. 320,400/-, overtime for 14 years – Kshs. 558,190/-, terminal benefits – Kshs. 72,684/- making a grand total of Kshs-. 933,274/-. From my reading of Section 90 of the Employment Act, the remedies one is entitled to are capped in the sense that parties are to seek redress within 3 years save for continuing wrongs in which case the limitation is 12 months upon cessation thereof. It seems the Claimant was reaching too far in his quest for relief as the law only permitted a claim on the house allowance and overtime for one year. It is unclear why he chose to file suit as the dues for overtime were settled and he signed a discharge voucher on 23rd August 2016. He had received the first payment of Kshs. 62,700/- in July 2016. He never made any claim for house allowance for the period of service nor did he demonstrate that he not paid house allowance. He did not lead any evidence as to how much he earned each month. There was no pleading in relation to his salary per month so as to enable the Court consider and make a determination on his dues. Having taken all the above into account and the facts, evidence and the law in respect of this case, in my considered view, the claim was unmerited and is only fit for dismissal. I accordingly dismiss the Claimant's suit with no order as to costs.

It is so ordered.

Dated and delivered at Nairobi this 17th day of November 2020

Nzioki wa Makau

JUDGE