



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO 1749 OF 2014

JARED ONDIEKI MOMANYI.....CLAIMANT

VS

RADHESHYAM TRANSPORT LTD.....RESPONDENT

JUDGMENT

Introduction

1. By a Memorandum of Claim filed in court on 8th October 2014, the Claimant sued the Respondent for unlawful termination of employment. The Respondent filed a Response on 29th October 2014.
2. When the matter came up for hearing, the Claimant testified on his own behalf and the Respondent called its Workshop Manager, Charles Machira Moses.

The Claimant’s Case

3. The Claimant states that he was employed by the Respondent as a casual worker at a weekly salary of Kshs. 6,000 effective January 2013. He worked as such until 14th September 2013 when his services were terminated.
4. The Claimant contends that he was dismissed without being afforded an opportunity to dispute the truthfulness of the allegations leveled against him. He therefore claims the following:

- a) One week’s pay in lieu of notice.....Kshs. 6,000
- b) Leave days (Kshs. 1,000*1.75 days*9 months).....15,750
- c) House allowance for 270 days @ Kshs. 88.....23,760
- d) 12 months’ salary in compensation.....288,000
- e) Costs plus interest

The Respondent’s Case

5. In its Response dated 27th October 2014 and filed in court on 29th October 2014, the Respondent avers that the Claimant was engaged as a casual worker by its Quantity Surveyor, one Mr. Mwaura (now deceased).
6. The Respondent states that it did not at any time engage the Claimant as a casual worker for any fixed period of time. More particularly, the Respondent denies engaging the Claimant from January 2013 until 14th September 2013.
7. The Respondent avers that it only engaged with the Claimant intermittently to procure casual workers for the Respondent at a consideration. The Respondent adds that it stopped engaging with the Claimant to procure casual labourers for it after the Claimant failed to pay the casual workers whom he had procured for the Respondent after being given their wages to pay them.

8. The Respondent denies terminating the Claimant's services on 14th September 2013 or any time at all and states that there was no employment relationship at any time capable of being terminated.

Findings and Determination

9. From the pleadings filed by the parties and the evidence adduced before the Court, the first issue for determination in this case is whether there was an employment relationship between the parties, capable of enforcement by this Court.

10. While denying the existence of an employment relationship, the Respondent admits engaging the Claimant intermittently to procure casual labour for off-loading construction materials on site. The Respondent's Workshop Manager, Charles Machira Moses told the Court that the Claimant and other offloaders were paid per lorry offloaded.

11. On his part, the Claimant states that he worked for the Respondent 6 days per week from January 2013 until 14th September 2013. He however did not call any independent evidence to corroborate his testimony in this regard. Moreover, although he claims that his employment was terminated after he asked for payment of accrued salary arrears, the Claimant did not make any such claim in his Memorandum of Claim.

12. As held by this Court in *Agripina Nthambi Ngundu v Sandro Giouse [2018] eKLR* not every work relationship creates an employment relationship. It seems to me that the Claimant had some work relationship with the Respondent but the Court did not find any evidence of an employment relationship as defined in law.

13. Having failed to establish the existence of an employment relationship between himself and the Respondent, the Claimant failed to lay a basis for his entire claim which therefore fails and is dismissed.

14. Each party will bear their own costs.

15. Orders accordingly.

DATED AND SIGNED AT MOMBASA THIS 15TH DAY OF JANUARY 2019

LINNET NDOLO

JUDGE

DELIVERED AT NAIROBI THIS 4TH DAY OF FEBRUARY 2019

MAUREEN ONYANGO

JUDGE

Appearance:

Jared Ondieki Momanyi (the Claimant in person)

Mr. Mari for the Respondent