



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 1125 OF 2015

(Before Hon. Lady Justice Maureen Onyango)

JARED ODAWA OLUGA.....CLAIMANT

VERSUS

BETHANY VILLAGE AFRICA.....RESPONDENT

JUDGMENT

By Statement of Claim dated 30th June 2015, the claimant alleges that he was employed by the respondent, a Non-Governmental Organisation registered under the Non-Governmental Organisation and Coordination Act Cap 134 to operate within the Republic of Kenya. He alleges that he was employed as a Driver and started working on 16th February 2012. His salary was Kshs.35,000 and there was an agreement in the alternative that he retains Motor Vehicle Registration Number KAY 562Y upon expiry of two years from the date of agreement.

The claimant avers that the respondent failed to pay his wages and also repossessed the motor vehicle. He prays for Kshs.1,600,000 accrued wages, costs and interest.

The respondent did not file a defence to the claim and did not attend court on the hearing date on 25th September 2018.

In his testimony, the claimant stated that the respondent was his employer from 16th February 2012 to 15th February 2015, as a Driver. That the Director of the respondent went to America and came back after three years. He was not paid for the period the Director was away. He survived on tips during the three years.

He prayed that the respondent be ordered by the court to pay his salary as claimed in the claim.

The claimant filed a copy of a contract that reads as follows –

“EMPLOYMENT CONTRACT

This agreement is made 16th this February day of 2012.

NAME OF EMPLOYEE: JARED ODAWA OLUGA

DESIGNATION: DRIVER

Monthly salary: Kshs.35,000

TERM: Contract shall run for a period of three (3) years and the same may be considerable.

JARED ODAWA OLUGA

Signed

Witnessed by

JOSEPH SIMBA (Operation Manager)

Signed

LYNN ROBINSON (Director)

Signed”

I have considered the evidence on record. The claimant has not stated whether he was working or who he was working for during the period he alleges the Director was away and he was without pay. He did not explain who was paying him the tips he survived on while the said Director was away. An employee who has not been paid salary for three years and whose Director is away cannot claim to be in employment for the said period as non-payment of salary is a fundamental breach and would frustrate a contract, bringing the contract to an end.

I find that the claimant has not proved that he worked for the three years or is owed salary for the three years claimed, with to result that the claim is dismissed with no orders for costs.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 27TH DAY OF MAY 2019

MAUREEN ONYANGO

JUDGE