



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

CAUSE NO 789 OF 2017

ANDREW OTIENO OCHIENG.....CLAIMANT

VERSUS

READY CONSULTANCYRESPONDENT

JUDGMENT

Introduction

1. By his Memorandum of Claim dated 2nd October 2017 and filed in court on the same date the Claimant has sued the Respondent for compensation for unfair termination of employment plus terminal dues.
2. The Respondent filed a Response on 30th October 2017 but did not attend the trial in spite of due notification. The Claimant testified on his own behalf.

The Claimant's Case

3. The Claimant states that he was employed by the Respondent as a Machine Operator from May 2003 until 20th February 2016, when his employment was unlawfully terminated. At the time of leaving employment, the Claimant earned a daily rate of Kshs. 530.
4. The Claimant's case is that he was not subjected to the requisite disciplinary procedure and was not paid his terminal dues. His claim is as follows:

- (a) One month's salary in lieu of notice.....Kshs. 15,900
- (b) Leave pay for 12 years.....190,00
- (c) House allowance @ 15% of basic salary.....28,620
- (d) Service pay @ ½ month's salary for years worked.....95,400
- (e) 480 off days.....254,400
- (f) Compensation for unlawful termination.....775,120
- (g) Certificate of service
- (h) Costs

The Respondent's Case

5. In its Memorandum of Response dated 24th October 2017 and filed in court on 30th October 2017, the Respondent denies having employed the Claimant as a Machine Operator or in any other capacity. The Respondent further denies that the Claimant was earning a daily rate of Kshs. 530. The Respondent adds that it was not in existence in May 2003 when the Claimant claims to have been employed.
6. The Respondent maintains that the Claimant was not its employee and the claim that his employment was unlawfully terminated cannot stand.

Findings and Determination

7. The first issue for determination in this case is whether there was an employment relationship between the parties capable of enforcement by the Court. In response to the Claimant's claim, the Respondent denies ever having employed the Claimant.
8. The Respondent further states that at the time the Claimant claims to have joined its employment, it was not even in existence. In support of its averment in this regard, the Respondent produced a copy of its Certificate of Incorporation showing 25th February 2009 as the date of its incorporation.
9. The Claimant did not lead any evidence to support his assertion that he was an employee of the Respondent. In the face of clear documentary evidence that the Respondent was not in existence at the employment effective date as pleaded by the Claimant, the Court finds nothing to suggest the existence of an employment relationship between the parties.
10. That being the case, the Claimant's claim, which is premised on employment, cannot stand. The entire claim fails and is dismissed.
11. Each party will bear their own costs.
12. Orders accordingly.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 23RD DAY OF MAY 2019

LINNET NDOLO

JUDGE

Appearance:

Mr. Nyange for the Claimant

No appearance for the Respondent