

The claimant testified that some time in 2012, he testified in favour of the respondent at Tamu Court in a case the respondent filed against the owners of cattle which destroyed his sugarcane crop.

The claimant testified that he respondent paid him Kshs.12,000 through Mpesa which was wages for the casual workers at the respondent's farm.

The claimant further testified that he sold the respondent his cane for Kshs.100,000 in February 2013 but the respondent paid only Kshs.16,000 and failed to pay the balance.

The claimant denied owing the respondent Kshs.8,000 for Mabati allegedly purchased for him by the respondent. He further denied that the respondent bought for him a motor cycle for Kshs.36,000 which he failed to pay.

Respondent's Case

The respondent, RW1, testified for himself and called one witness, JOSEPH AGUK ABONG'O, RW2.

RW1 testified that he employed the claimant to work in his sugarcane farm from 12.00 noon to 6 pm daily at an agreed salary of Kshs.1,100 per week payable every Saturday. That the claimant always asked for advance and was paid the balance every Saturday. At the beginning he paid the claimant by Mpesa through the claimant's phone but later the claimant gave him the claimant mother's phone number which he sued to pay him. The mother's name is JENIPHER MUGA. He referred to the Mpesa statement at appendix 5 of the defence.

RW1 testified that in 2012 the claimant informed him he wanted to leave work because he was attacked and felt insecure. He denied that the claimant worked up to 2014. He testified that there had been no work at the farm after he harvested cane that the claimant was guarding in March 2013.

RW1, testified that sometime in June 2012 the claimant reported to him that some people were grazing cattle in the sugarcane plantation. He reported to the police who advised him to file a civil suit against the owners of the cattle. It is in respect of that case that the claimant testified on his behalf at Tamu Court on 22nd April 2013 as an eye witnesses.

In respect of the counterclaim, RW1 testified that he took a loan of Kshs.500,00 to develop his 12 acre cane farm. The cane matured very well but before he could harvest some people grazed cattle in the cane farm which was destroyed even though he had engaged the claimant to guard it. He testified that he lost a lot of money due to the claimant's negligence of duty.

RW1 testified that long after the claimant stopped working for him, the claimant's mother approached him and informed him that the claimant did not have any source of income. RW1 bought a motor cycle which was not in very good mechanical condition, repaired it for Kshs.5,000 and gave it to the claimant who did not pay him the agreed price.

RW1 further testified that he bought the claimant Mabati worth Kshs.8,000 which the claimant used to build a house. Further that at one time he wanted to buy mature cane and asked the claimant to look for a person willing to sell. The claimant had cane which he sold to RW1 at an agreed price of Kshs.100,000 and he made part payment. He later got a call from a friend who informed him that the claimant had harvested the cane. He reported the matter to the Chief but the issue was never resolved. He testified that the claimant was a conman and he was the victim.

RW2 JOSEPH AGUK ABONG'O testified that he was a motor cycle mechanic and knew both the claimant and the respondent (RW1) who was a teacher. He testified that he knew motor cycle registration No. KNCA 911L which was taken to him for repairs by the claimant. The respondent was the owner of the motor cycle. The respondent paid for the repair charges and it was used by the claimant as a taxi.

Determination

I have considered the pleadings, the evidence adduced in court and the submissions. The issues for determination are the following –

- (i) Whether the claimant has proved his case and if he is entitled to the prayers sought, and
- (ii) Whether the respondent has proved his counterclaim.

The claimant's only prayer is for payment of his salary in the agreed sum of Kshs.400 per day from November 2011 to February 2014. However in the memorandum of claim he prays for Kshs.364 per day from November 2011 to April 2012, Kshs.412 per day from May 2012 to April 2013 and Kshs.470 per day from May 2013 to February 2014. He further prays for leave of 3 months at Kshs.470 per day. In his claim and witness statement he states that he was employed as caretaker cum gardener while in his testimony he testified that he was engaged as caretaker, security guard, supervisor and farm worker and was never paid for the entire period he worked.

The respondent however produced Mpesa statements which reflect payments to the claimant. The Mpesa statement also reflects payments to Jenipher Muga whom the respondent states is the claimant's mother whose phone number the claimant gave him to use to pay his wages. The respondent further states the agreed pay was not Shs.400 per day but Shs.1,100 per week which he paid.

It is trite law that he who asserts must prove. The claimant produced no evidence to prove his averments or to controvert the evidence in the form of Mpesa statements produced by the respondent.

I find that the claimant has not proved his claim on a balance of probabilities with the result that the same is dismissed.

On the counterclaim, the respondent's prayer for loss of cane is not payable as he was already paid compensation in TAMU SRMCC No. 90 of 2012 in which he sued the owners of the cattle that were grazed in the sugarcane plantation. He has not proved that he bought the claimant Mabati (iron sheets) valued at Kshs.8,000 or that if he did, it was a loan to be repaid by the claimant. He has further not proved that he owned motorcycle Registration No. KNCA 911L as no ownership documents were produced. Further there was no evidence that the motor cycle was sold to the claimant.

I further find no proof that the respondent suffered any loss following the sale of cane to him by the claimant as there was no proof that the claimant harvested the cane after selling it to the respondent.

From the foregoing I find the counterclaim not proved and dismiss the same.

The result is that both the claim and counterclaim are dismissed with each party bearing their costs.

DATED AND SIGNED AT NAIROBI ON THIS 24TH DAY OF APRIL 2019

MAUREEN ONYANGO

JUDGE

DATED AND DELIVERED AT KISUMU ON THIS 20TH DAY OF MAY 2019

MATHEWS NDERI NDUMA

JUDGE