



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 1442 OF 2018

(Before Hon. Lady Justice Maureen Onyango)

MARVEL KISAKA WANDABWA.....CLAIMANT

VERSUS

STEADFAST CAPITAL LLP.....RESPONDENT

RULING

The Claimant/Applicant filed suit against the respondent vide Memorandum of claim dated 12th October 2018 seeking the following orders –

- a) 12 months' salary as compensation for constructive dismissal.
- b) Unpaid salaries for 17 months.
- c) Pay in lieu of notice.
- d) Service pay.
- e) Unpaid salary April 2018 to August 2018.
- f) Issuance of certificate of service.
- g) Overtime at 2 hours daily.
- h) Costs of this suit.
- i) Any other relief the Court deems fit to grant or order.

By an application dated 13th November 2018 filed under certificate of urgency on 1st November 2018 the claimant seeks the following orders –

1. That service of this application be dispensed with, the application be heard e parte and the matter be certified urgent
2. That the respondent be compelled to remit to the Claimant all his withheld dues arising from non-payment of 6 months' salary that is Kshs.486,958.
3. That the costs of this application be awarded to the Claimant.

The grounds in support of the application as set out both on the face of the application and in the affidavit of MARVEL KISAKA WANDABWA the claimant/applicant sworn on 18th November 2018 are that at the time he left employment on 30th September 2018 he had not received salary for the months of April, May, June, July, August and September 2018 amounting to Kshs.510,000 less payment received of Kshs.130,000 leaving a balance of Kshs.380,000. He further seeks leave days of Kshs.64,458 and service pay of Kshs.42,500. He states that his salary was Kshs.85,000 per month.

The respondent has not entered appearance or filed defence to the claim which according to the affidavit of service, was served upon a Director of the respondent Mwangi Kariuki on 23rd October 2018. He was further served with the application on 7th January 2019 but has not responded to the same.

Since the respondent has not responded to the claim or application, I decided to interrogate the affidavits of service. There are four in total, and all the service was effected by Felix Omondi Owino, a Process Server. What struck me about them is that first, the process server states each time that the person he served confirmed he was Mwangi Maina. I would have expected him to state after the first service that the said Mwangi Maina was known to him from previous service.

Secondly the first two services, according to the affidavits of service, were at the apartment at Riverside Drive, Riverside Pearl Apartment, 1st Floor Door 2B. For the last two services the process server went to STEADFAST CAPITAL along Raphta Road, Nellion Place, 3rd Floor, Westlands. Both times he met a Secretary whom he introduced himself to and asked for Mr. Mwangi Maina Kariuki, the company Director and both times he was told by the Secretary that the company had shifted to a location the Secretary did not know. Again both times he called Mwangi Kariuki on his phone number 0727xxxx and both times Mwangi Kariuki gave him directions to the apartment at Pearl of Riverside, along Riverside Drive, Riverside Garden House 2. Both times a lady opened the door, accompanied by a man who introduced himself after the process server introduced himself and explained the purpose of the visit. I found all these abnormal. A person is not introduced every time he is effecting service to a person he has served before. And why go to the office to serve a third and fourth time when you have served at the residence before?

In addition, the process server did not attach his registration certificate.

The foregoing raised doubt as to whether any service was effected upon the respondent. The foregoing notwithstanding, it is my opinion that the prayers sought are substantive and should be subject to evidence to be adduced at the full hearing as there is no proof of the same either in the application or in the memorandum of claim.

For these reasons, the application is dismissed. There shall be no orders for costs.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 20TH DAY OF MAY 2019

MAUREEN ONYANGO

JUDGE