



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO 577 OF 2015**

**JOHN ODERO OMONDI OKONGO.....CLAIMANT**

**VERSUS**

**CHRISTINE OMUOMBO, EMILY APAMO ODERA, ALPHA**

**ACHIENG' & GREGORY OTIENO OGOLA**

***(Sued in their capacity as)*THE ADMINISTRATORS OF THE**

**ESTATE OF THE LATE TOM O' OMUOMBO).....RESPONDENTS**

**JUDGMENT**

**Introduction**

1. This claim is brought by John Odero Omondi Okongo against Christine Omuombo, Emiy Apamo Odera, Alpha Ochieng and Gregory Otiemo Ogola, all sued in their capacity as the Administrators of the Estate of the late Tom O'Omuombo. The claim is contained in a Memorandum of Claim dated 14<sup>th</sup> April 2015 and filed in court on 15<sup>th</sup> April 2015.

2. The Respondents did not file any response. The matter therefore proceeded as an undefended claim, with the Claimant testifying on his own behalf. The Claimant also filed written submissions.

**The Claimant's Case**

3. The Claimant states that he was employed by the late Tom O'Omuombo on 28<sup>th</sup> October 2004 as a caretaker, charged with the responsibility of managing a block of flats on plot number 416/417 located at Kayole Soweto. His initial monthly salary was Kshs. 7,000.

4. The Claimant further states that O'Omuombo passed away sometime in the year 2007 and on 18<sup>th</sup> March 2015, Alpha Achieng' unlawfully terminated his employment.

5. The Claimant now claims the following from the Respondents:

- a) 12 months' salary in compensation.....Kshs. 180,000
- b) 3 months' salary in notice pay.....45,000
- c) Unpaid salary for March 2015.....15,000
- d) Service pay.....75,000
- e) Leave pay for 10 years.....150,000
- f) Overtime allowance for 10 years.....4,158,000

- g) Unpaid holidays for 10 years.....169,400
- h) General damages for breach of contract and loss of employment
- i) Certificate of service
- j) Costs plus interest

**Findings and Determination**

6. The main issue for determination in this case is whether the Claimant has made out a case of unlawful termination of employment. From the evidence on record, the Claimant was employed as a caretaker by Tom O’Omuombo on 1<sup>st</sup> November 2004. The Claimant testified that Tom O’Omuombo passed away sometime in the year 2007, upon which his children took over the management of his business. The Claimant further testified that his employment was terminated by Alpha Achieng by way of short message service (sms) text.

7. The Claimant’s claim arises from an employment relationship and the first question the Court must ask is whether such a relationship has been established. The Respondents have been sued in their capacity as Administrators of the Estate of Tom O’Omuombo but no probate documents were placed before the Court.

8. The Court was therefore unable to see any legal connection between the late Tom O’Omuombo and the Respondents. That being the case, there is no legal basis upon which the obligations of the said Tom O’Omuombo could be passed on to the Respondents.

9. Secondly, Section 47(5) of the Employment Act places the burden of proving unlawful and unfair termination of employment on the employee. Apart from his word that his employment was terminated by sms, the Claimant did not present any evidence of unlawful or unfair termination. The Court therefore finds and holds that the Claimant failed to discharge the burden of proof placed on him by the law.

10. Overall, the Court finds and holds that the Claimant not only failed to establish the existence of an employment relationship between him and the Respondents but also failed to prove a case of unlawful termination.

11. The result is that the Claimant’s entire claim fails and is dismissed with no order for costs.

12. It is so ordered.

**DATED AND SIGNED AT NAIROBI THIS 16<sup>TH</sup> DAY JULY 2019**

**LINNET NDOLO**

**JUDGE**

**DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF JULY 2019**

**MAUREEN ONYANGO**

**JUDGE**

Appearance:

Mr. Kandere for the Claimant

No appearance for the Respondents