



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 1568 A OF 2015

JOSEPHAT MASHETI KITAMBI.....CLAIMANT

VERSUS

KNIGHTS ARMOUR AFRICA LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. On 8th September 2015, the Claimant filed a Memorandum of Claim seeking compensation for unfair termination of employment and payment of terminal dues.
2. In spite of due service, the Respondent did not respond to the claim. The matter therefore proceeded undefended, with the Claimant testifying on his own behalf.

The Claimant’s Case

3. The Claimant states that he was employed by the Respondent as a security guard at a monthly salary of Kshs. 7,000 effective December 2012. He was not issued with a written contract of employment. He worked until September 2014 when his employment was terminated.
4. The Claimant terms the termination of his employment unlawful and unfair and now claims the following:

- a) Salary in lieu of notice.....Kshs. 7,000.00
- b) Service pay for 2 years.....7,000.00
- c) Payment for off days worked.....10,266.60
- d) Uniform refund.....3,000.00
- e) Annual leave.....8,983.33
- f) House allowance @ 15% of basic salary.....23,000.00
- g) 12 months’ salary in compensation.....84,000.00
- h) Costs plus interest

Findings and Determination

5. This being an undefended claim, the first issue for the Court to determine is whether there existed an employment relationship between the Claimant and the Respondent.
6. The Claimant states that he was not issued with a written contract of employment. To support his

claim, he filed a document on the Respondent's letterhead dated 4th September 2013, confirming that he had been issued with uniform.

7. On the face of it, the document required the Claimant to append his signature in agreement to deduction of Kshs. 3,000 at monthly intervals of Kshs. 500. The document produced in Court was however not signed and the Claimant did not tell the Court why his signature was missing. Moreover, the date on the document does not tally with the effective date of employment as pleaded by the Claimant.

8. In light of the foregoing, the Court was unable to place any probative value on the said document as proof of an employment relationship between the parties. That said, and in the absence of any further evidence to corroborate the Claimant's word, the Court finds and holds that the Claimant failed to establish an employment relationship to support his claim against the Respondent.

9. As a result, the Claimant's entire claim, which is premised on the existence of an employment relationship, fails and is dismissed.

10. I make no order for costs.

11. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 16TH DAY OF JULY 2019

LINNET NDOLO

JUDGE

DELIVERED AT NAIROBI THIS 26TH DAY OF JULY 2019

MAUREEN ONYANGO

JUDGE

Appearance:

Mr. Waiganjo for the Claimant

No appearance for the Respondent