



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 2544 OF 2016

(Before Hon. Lady Justice Maureen Onyango)

KRONES LCS EAST AFRICA LIMITED.....CLAIMANT

VERSUS

PATRICK CHACHA MAHIRI.....RESPONDENT

JUDGMENT

By a Statement of Claim filed on 9th December 2016 the Claimant avers that the Respondent failed to undertake duties assigned to him in both Ethiopia and Burundi despite receiving allowances to facilitate his travel and accommodation in these countries. It further avers that the respondent resigned from employment without accounting for his expenditure on the amounts advanced to him as allowances for travel and that he failed to surrender the Claimant's property in his custody at the time of resignation. It therefore seeks the following reliefs:

- a. A sum of:-
 - i. Kshs.268,779.27 and
 - ii. €2,116.
- b. Costs of the suit
- c. Interest on the above until payment in full.

The Respondent neither entered appearance nor filed a defence in respect to the claim. Therefore, the claim proceeded as an undefended cause and was disposed of by way of written submissions.

It is the Claimant's averment that vide a contract of employment dated 29th September 2008 it offered the Respondent the position of Mechanical Engineer which he accepted. That on 8th October 2015 and 4th January 2016 it paid an expense/travel advance of Kshs.315,100 and Kshs.112,448 to facilitate the Respondent's travel, accommodation and subsistence in Ethiopia where he was to carry out duties allocated to him. That despite receipt of the funds the Respondent did not travel to Ethiopia and never accounted for the money sent to him as he was obligated to do.

The Claimant avers that the Respondent also failed to account for Kshs.31,160.60 that was paid to him on 4th November 2015 to facilitate his travel and accommodation to Burundi.

The Claimant avers that the Respondent vide an email dated 17th April 2016 resigned from his employment with his last working day being 13th May 2016. It contends that after resignation the Respondent did not return the following items, which were in his possession: a laptop, an e-token, a transponder, a Blackberry phone, a toolbox and a staff badge all valued at € 2,116.

The Claimant submitted that Rule 15(3) of the Employment and Labour Relations Court (Procedure) Rules 2016 provides that where there is no defence or response filed within the prescribed period the court is to direct that the matter proceed as an undefended cause. It submitted that the respondent was accorded ample time and opportunity to file a response but failed to do so. It relied on the decisions in *Mercy Njoki Karingithi v Emerald Hotels Resort & Lodges Ltd [2014] eKLR* and *Alfred Kangu v Rudoff Honnegger t/a Hotel Rudi/ Atlantic Rudolf [2018] eKLR*.

It submitted that on 29th March 2017 the Respondent returned the following items: a laptop, an e-token, a transponder, a black berry phone and his staff badge. It therefore argued that the Respondent's act of returning some of the items belonging to the Claimant is proof that he was aware of the existence of this suit but he chose not to file a response. It submitted that the claimant has produced documents to prove its claim and demonstrated that the sums were advanced to the Respondent together with proof of payment. It urged the court to allow the averments in the claim and enter judgment against the respondent as prayed.

Determination

The main issue for determination herein is whether the Claimant is entitled to recover the sum of Kshs.779.27 that was advanced to the Respondent for subsistence for work to be undertaken in both Ethiopia and Burundi and amounts for the items not returned by the Respondent.

The Respondent neither entered appearance nor filed a response to the claim to controvert the claimant's averments therein. This is despite the fact that his advocates, by a letter dated 24th August 2016, in response to the Claimant's advocates indicated that the Respondent was not in a position to undertake assignments in Ethiopia due to his medical condition.

The Respondent produced both an expense/travel expenses form issued by it and payment summaries from Barclays Bank for the sums of Kshs.315,000 and Kshs.112,448 respectively. It further produced subsistence allowance claim form indicating that the Claimant has received € 329 paid by a customer in Burundi and €240 from Coca Cola Kwanza Tanzania. Of these amounts the Claimant avers that it recovered Kshs.31,160 from the Respondent.

The Respondent having failed to respond to the claim and the claimant having demonstrated that the respondent received the said monies and did not utilise it for the purpose for which it was intended, it is entitled to a refund of the same by the respondent.

In respect of the Respondent's property, the Respondent submitted that the Claimant has returned some of the items due to him which were a laptop, an e-token, a transponder, a Blackberry phone and a staff badge. Therefore the only item that the Respondent did not recover was a toolbox valued at € 765 which the Claimant is entitled to recover from the Respondent.

The Court therefore finds that the Claimant is entitled to the sum of Kshs.268,779.27 and € 765 and enters judgment for the claimant against the respondent for the said sum plus costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 12TH DAY OF JULY 2019

MAUREEN ONYANGO

JUDGE