



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 145 OF 2016

(Before Hon. Justice Mathews N. Nduma)

PETER OCHIENG OMBENDU.....CLAIMANT

VERSUS

GOGNI RAJOPE CONSTRUCTION LIMITED.....1ST RESPONDENT

CEABUD ENGINEERING SERVICES LIMITED.....2ND RESPONDENT

JUDGMENT

1. This suit was filed on 3rd June 2016, in which the claimant states that he was employed on 2nd February 2009 by the respondents as a driver. That he served diligently until 10th October 2013 when the respondents' Site Engineer ordered the claimant to surrender the truck he was driving and on 19th October 2013, the respondent orally terminated the employment of the claimant.
2. The suit was defended by a memorandum of response filed by the 1st and 2nd respondents on 14th July 2016. Both respondents are distinct limited liability companies. The 1st respondent admits to have employed the claimant on 2nd June 2009 as a Tipper truck driver. The 1st respondent avers in the response that the claimant did not work in the month of October 2013 having deserted duty on 13th September 2013. The respondent admits that the claimant earned a monthly salary of Kshs. 21,000.
3. In the submissions filed by the respondents' advocates, the respondent admits that it did not pay the claimant salary for the 9 days worked in September 2013 in the sum of Kshs. 8,400.
4. The respondent also admits that it did not pay the claimant in lieu of leave days not taken between the June 2012 to August 2013 in the sum of Kshs. 28,000.
5. The respondent however counter claims salary in lieu of notice in the sum of Kshs. 21,000 and the salary paid to the claimant in the sum of Kshs. 21,000 less the amount it owes to the claimant in the sum of Kshs. 36,400 in the sum of Kshs. 5,600.
6. The parties did not call any witness in this matter to either testify orally before court or to adopt the witness statements filed by the parties before court and produce the list of documents filed by the parties.
7. It follows that except the admissions specifically made by the parties, the claimant did not adduce any evidence to prove his claim before court nor did the respondent adduce any evidence to prove the counter claim it has made against the claimant.
8. Accordingly, the court finds that the claimant has failed to prove on a balance of probabilities the claim set out in the memorandum of claim except the admissions made by the respondent in its memorandum of claim and written submissions in the sum of Kshs. 36,400.
9. The respondent has failed to prove its counter claim since it did not adduce any evidence to prove that the claimant did not work from 13th September 2013 and deserted work without notice.
10. Accordingly, the court enters judgment in favour of the claimant by virtue of the admissions made by the respondent in the sum of Kshs. 36,400 representing Annual leave for the period June 2012 to August 2013 and 9 days arrear salary for the month of September 2013. The rest of the claims by the claimant and the counter claim by the respondent are dismissed.

11. The sum of Kshs. 36,400 is payable with interest at court rates from date of filing suit till payment in full. The respondent to pay the cost of the suit.

Judgment Dated, Signed and delivered this 18th day of September, 2019

Mathews N. Nduma

Judge

Appearances

Mr. Onyango for Claimant

Mr. M.M. Omondi for Respondent

Chrispo – Court Clerk