



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 1842 OF 2015**

**DISMUS MOGAKA GICHANA.....CLAIMANT**

**VERSUS**

**KIP PLAST LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 29th November, 2019)

**JUDGMENT**

The claimant says he was employed by the respondent by the contract signed on 04.05.2015 to the position of Machine Attendant. It was said to be employment from May 2015 to December 2015. The claimant says he worked for one month in May 2015 and he further says he was paid a monthly gross pay of Kshs.13, 297.00. The agreed gross monthly pay per exhibited contract was Kshs.12, 765.00 being basic pay of Kshs. 11, 100.00 plus house allowance of Kshs.1, 665.00. The claimant testified that after serving for one month he was verbally terminated on account that there was no work for him to perform.

The claimant felt aggrieved and he filed a memorandum of claim on 19.10.2015 through Philip Henry Associates alleging refusal to pay terminal dues and unfair and unlawful termination. He prayed for:

- a) The declaration the dismissal was unlawful and unfair hence null and void.
- b) Kshs. 13, 297 pay in lieu of notice and Kshs. 13, 297 x 6 =Kshs.79, 782.00 being for unexpired term thus a sum of Kshs.93, 079.00.
- c) Certificate of service.
- d) Interest and costs of the suit.
- e) Any other statutory entitlement.

The respondent did not file a defence. The matter proceeded exparte.

The Court has considered the evidence. The claimant at paragraph 3(i) pleaded that he was terminated on 24.06.2015. In his witness statement the claimant stated he was dismissed on 24.06.2015. In his testimony in Court he testified that he was verbally terminated in May and paid after termination per payslip filed. The payslip is for May 2015. The Court has carefully considered the claimant's evidence and finds that it is contradictory as is incredible. First the claimant says he was employed in May and terminated in May 2015 but that contradicts the date of termination pleaded as 24.06.2015 and in the demand letter as 25.06.2015. Second the demand letter says there was no reason for termination but in his testimony the claimant stated he was told there was no job. Thirdly, the agreed monthly basic pay was Kshs.11, 100.00 but the payslip reads Kshs.12, 432.00 and the variance was not explained at all. Fourthly, in all his testimony, pleadings and documents there is no indication of the persons or officials of the respondent that the claimant dealt with so that his testimony is lacking in key details. Not a single name such as the person who signed the contract for the respondent or who verbally terminated the claimant has been mentioned. The Court observes that while clause 1 of the purported contract has 8 inserted for period of months, the narration is for May 2015 to December 2015 which falls short of the alleged 8 months' fixed term contract. With such contradictions, the Court finds that the claimant's evidence does not establish his claims and prayers on a balance of probability. The claim and prayer for the pay at Kshs. 13, 297.00 as claimed is contradictory to the agreed gross pay of Kshs.12, 765.00. In the exhibited payslip the house allowance shifts toKshs.1, 865.00 while the agreed house allowance was purportedly Kshs.1,665.00/. The Court further observes that the claimant had not signed on the space provided on the payslip to acknowledge alleged payment as was provided. The suit must fail for want of coherent and consistent evidence by the claimant to justify the claims and prayers.

The affidavit of service of the notice of summons and the memorandum of claim appears to be absent on the record. That absence of the crucial return of service will aid to render the suit incurably defective in the manner it was prosecuted for the claimant.

In conclusion, judgment is hereby entered for the respondent and against the claimant for dismissal of the suit with no orders on costs.

**Signed, dated and delivered in court at Nairobi this Friday, 29th November, 2019.**

**BYRAM ONGAYA**

**JUDGE**