



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO 393 OF 2014**

**CHARLES AKWERA ODUYA.....CLAIMANT**

**VERSUS**

**METAL CANS AND CLOSURES LIMITED.....1<sup>ST</sup> RESPONDENT**

**LUPTRA MANPOWER AND HR**

**MANAGEMENT SERVICES.....2<sup>ND</sup> RESPONDENT**

**J U D G E M E N T**

1. By a Memorandum of claim filed on 13<sup>th</sup> March, 2014 the Claimant averred that he was employed by the 1<sup>st</sup> respondent at a gross salary of Kshs. 17,825. According to him, the 1<sup>st</sup> respondent refused to issue him with a written contract and instead delegated its responsibility to an outsourcing company the 2<sup>nd</sup> respondent. According to the Claimant, all staff recruitment process, data and payroll were all handled by the 1<sup>st</sup> respondent.
2. In the months of November, 2012, the 1<sup>st</sup> respondent's director, one Mr. Dahir driven by racism, unlawfully terminated the claimant's service. Prior to termination the Claimant was never warned of any wanting performance nor was he given any opportunity to correct and improve on his performance.
3. The Claimant averred that the respondent never proved any reason for terminating the Claimant's service.
4. The respondent on the other hand pleaded that by an agreement dated 5<sup>th</sup> March, 2013 it procured the services of the 2<sup>nd</sup> respondent, a personnel outsourcing company to provide them with employees who possess the necessary qualifications, competence and ability to handle the work available at the 1<sup>st</sup> respondents' premises.
5. The 1<sup>st</sup> respondent denied that it handled the recruitment process, staff bio-data staff payroll and statutory deductions. According to the 1<sup>st</sup> respondent it was an express term of the agreement that the 2<sup>nd</sup> respondent would send an invoice to the 1<sup>st</sup> respondent every month for salaries and statutory deductions of all workers availed to the 1<sup>st</sup> respondent and upon payment, the 2<sup>nd</sup> respondent would pay all salaries and wages of its employees and make all mandatory statutory deductions.
6. The 1<sup>st</sup> respondent further pleaded that in August, 2013 it purchased a new digital printing machine which did not require human assistance as it was able to feed itself with metallic paper. The respondent further stated that it duly informed the 2<sup>nd</sup> respondent of the change in machine and requested them to terminate the employment of all the process workers including the Claimant. The 2<sup>nd</sup> respondent never entered appearance or filed a response.
7. In oral evidence before Court the Claimant stated that he was employed in July, 2007 as a general worker. His salary was Kshs. 7,800 and that he was earning Kshs. 17,825/= by the time he was terminated. According to him he was never told the reason for termination. He further stated he was never issued with any notice or warning.
8. In cross -examination he stated that the 2<sup>nd</sup> respondent came in 2012 and that it was to take over musterroll. It was his evidence that they asked about their service with Metal Crown (1<sup>st</sup> respondent) but were issued with a one-year contract by the 2<sup>nd</sup> respondent.
9. The Respondent's witness Mr. Moses Bonde stated that he was a Quality Controller at the 1<sup>st</sup> respondent. According to him, employees were provided by Lupra (the 2<sup>nd</sup> respondent). The 1<sup>st</sup> respondent imported a digital machine which required less manpower. Most workers were therefore laid off as a result. The 1<sup>st</sup> respondent informed the 2<sup>nd</sup> respondent to handle the laid off workers.

10. The Claimant sued both respondents but only the 1<sup>st</sup> respondent filed a response to the Claim. The 2<sup>nd</sup> respondent never appeared nor filed a response to the claim. There is no evidence on record that the 2<sup>nd</sup> respondent was served.

11. The Claimant seemed to have been more pre-occupied with the 1<sup>st</sup> respondent yet the 1<sup>st</sup> respondent in their response exhibited manpower outsourcing agreement between itself and the 2<sup>nd</sup> respondent dated 5<sup>th</sup> March, 2013.

12. It could be true that prior to the Outsourcing agreement the Claimant may have been an employee of the 1<sup>st</sup> respondent as shown in the NSSF statement attached to the Memorandum of claim, but there is in existence an agreement to Outsource manpower between the 1<sup>st</sup> respondent and the 2<sup>nd</sup> respondent. The Claimant has not made any complaint about the changes of employment from the 1<sup>st</sup> Respondent to 2<sup>nd</sup> respondent. He insists he was an employee of the 1<sup>st</sup> respondent yet in cross-examination he said he was issued with a one-year contract by the 2<sup>nd</sup> respondent when he asked about his service with the 1<sup>st</sup> Respondent.

13. In his prayers before the County Labour Office, the Claimant does not claim any service from the 1<sup>st</sup> respondent. All he seeks is twelve months salary in lieu of notice, compensation for ½ extra hours worked and compensation for disturbance. The basis upon which these claims were brought have not been clearly demonstrated. In the circumstances the Court is not persuaded that the claim has been proved to the required standards and the same is hereby dismissed with no order as to costs.

14. It is so ordered.

**Dated at Nairobi this 22<sup>nd</sup> day of November, 2019**

**Abuodha Jorum Nelson**

**Judge**

Delivered this 22<sup>nd</sup> day of November, 2019

**Abuodha Jorum Nelson**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha J. N.**

**Judge**