



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1964 OF 2012

(Before Hon. Justice Hellen S. Wasilwa on 5th December, 2019)

JOSEPH MUTUKU MUSEE.....CLAIMANT

VERSUS

KENYA VEHICLE MANUFACTURES.....RESPONDENT

RULING

1. The instant application is with respect to the Judgment delivered on 25th September, 2018 which held that the pending issues for determination was the commission payable vis a vis the Counter-claim.

2. The Court directed the parties to file their tabulations on the issues to which the Claimant filed his submissions in response to the Respondent's submissions.

Respondent's submissions

3. The Respondent submitted that the Claimant in his testimony confirmed that he was granted a loan which was guaranteed by the Respondent and that he duly signed the Respondent's rules and regulations on 7th December, 2010.

4. It submitted that the claimant was to pay for the loan through his commissions but he did not make any commissions to pay off the loan. It was therefore its submission that at the time of separation, the car loan balance was Kshs. 598,685.

5. The Respondent submitted that in respect of the Claimant's claim for commissions which was based on the letter dated 21st January, 2011 it requested for the production of the original letter as it did not emanate from it. However, the Respondent did not produce the original letter.

6. It submitted that the Claimant failed to demonstrate how he obtained the commissions, as he had no evidence or document to prove the same. It submitted that the Claimant did not make any sales in the year 2010 as per his contract and that he was paid an advance payment of Kshs. 40,000, which was to be recovered from his commissions.

7. It averred that the Claimant did not meet his obligations under the contract of engagement as he did not make profits and that he did not meet his performance targets as set out in the letter dated 11th January, 2011. It submitted that no contributions were made to the Claimant's pension as there were no sufficient commissions to meet his monthly advance or his pension.

8. In respect of the Counter-claim, it submitted that throughout the Claimant's engagement with the Respondent, he only made commissions of Kshs. 791,719.30 against the advance payments of Kshs. 1,048,000 which was paid to him.

9. It further submitted that the Claimant owes it the difference of Kshs. 256,280.70 being advance payment made over the commissions made to the Claimant. It further submitted that the Claimant did not make any monies in commission which were sufficient to recover the fuel advances of Kshs. 476,187.

10. It submitted that it annexed Appendix 7 to its documents on the tabulation of the Counter-claim and commissions made by the Claimant. It finally submitted that he did not make any other of further commissions and can not therefore claim the same and that the supporting documents in respect of the commissions did not emanate from it.

Claimant's submissions

- 11 The Claimant submitted that the Counter-claim of Kshs. 598,685 should be dismissed as it is unsupported by documentary evidence. Further, that the car loan of Kshs, 598,685 was paid up to the bank on 9th November, 2013 and he was issued with a certificate of clearance on 9th December 2014.
12. He submitted that the claim for fuel of Kshs. 476,187.00 should be dismissed as the fuel was provided for free to all sale executives as evidenced in the memo addressed to the Claimant on 9th September, 2010. He further submitted there was no provision requiring that fuel be deducted from his commissions.
13. He submitted that the claims for Kshs. 1,048,000 and Kshs. 256,280.70 which referred to as advance payment should be dismissed as they lack evidence and that the Respondent has not demonstrated how it arrived at the figures.
14. He submitted that the issue of losses does not arise as the Respondent had issued a price list for transactions made on bus bodies to all the sales executives for use from time to time.
15. He finally submitted that the Respondent has not provided any cogent evidence for the entire counter-claim of Kshs. 1,736,329.60.
16. I have examined all the submissions of the Parties herein. The Claimant sought to be paid commissions on what he earned. I made a ruling that he should submit and demonstrate how the commission were earned.
17. I have however not been shown any documentary evidence to prove sales made, profits earned and from which commission were calculated from. The failure by the Claimant to demonstrate this means that the claim is not proved.
18. On the other hand, the Respondent made a counter claim 598,685/= which is from commissions overpaid and fuel taken.
19. Again, the Respondent failed to demonstrate how they arrived at the figures quoted. On issue of fuel, the claimant has proved that he was given a letter authorising him to fuel his vehicle and be reimbursed by the company.
20. In this case then, the Respondent have not demonstrated how they arrived at the figure claimed in the counter claim.
21. I find both the claim by the Claimant for commission and the counter-claim by the Respondent not proved and I dismiss both claims. The judgement remains as earlier delivered on 25/9/2018.

Dated and delivered in open Court this 5th day of December, 2019.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Claimant – Present in person

Masese holding brief Kanyiri for Respondent – Present