



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 2557 OF 2012

(Before Hon. Lady Justice Hellen S. Wasilwa on 22nd March, 2018)

DENNIS OWINO ODUOR.....CLAIMANT

VERSUS

JONYAKO SERVICES LIMITED..... RESPONDENT

JUDGEMENT

1. The Claimant herein filed his Memorandum of Claim on 21/12/2012 through the firm of S. M Keyonzo Advocates. He avers that he was an employee of the Respondent having been employed in March 2010 as an Electrician at a monthly salary of Kshs. 15,000/=.
2. On 12/10/2012, the Respondent sent the Claimant to buy some bulbs which he did. He avers that at the same time he had also purchased some soldering iron which he put in his own tool box and the terminals. It was then alleged that these items had been stolen by him at work which was not true. As a result of the this false allegations, the Claimant avers that he was summarily dismissed from employment without any payment of his terminal dues.
3. The claim by the Claimant is for payment of his terminal dues as enumerated in paragraph 6 of the Memorandum of Claim all totaling to 317,721/=. He also claims for his toolbox containing 2 bulb holders, terminals and 5 bulbs which were confiscated by the Respondent at the time of dismissal.
4. The Respondent filed their defense on 14/11/2013 through the firm of M/S J Nyang & Company Advocates. They aver that they never employed the Claimant but that on specific occasions, the Claimant held brief for the Respondent and was paid in advance for the work done.
5. The Respondent deny the letter of recommendation to the Claimant and avers that the Claimant's allegation of theft was reported and investigations done. The Claimant then took off and never returned.
6. The parties filed their respective submissions which I have considered. The Respondent in their defense admit employing the Claimant but on piece rate basis being paid 600/= per day.
7. The Respondent denies the recommendation letter written to the Claimant but the same Respondent admits writing letters for the Claimant to NHIF and to the Claimant's Landlord indicating that he had employed the Claimant.
8. The Respondent was referred to Claimant's documents which are a letter written on Respondents documents indicating he was an employer of the Claimant. Despite the Respondent's insistence that he had no employment relationship with the Claimant, I find otherwise and find that the Respondent had employed the Claimant and this relationship was on from 2010 upto 2012 as pleaded by the Claimant.
9. Having found that the Respondent had employed the Claimant, the Respondent was duty bound to submit his employment records to show the nature and extent of this relationship as envisaged under section 74 of the Employment Act 2007 which obliges an employer to keep records of all their employees. The Respondent never produced the records. He had stated he employed the Claimant on piece rate basis but even such records were not exhibited before Court.
10. In the absence of such records the conclusion this Court can draw is that such records if produced would be detrimental to the Respondent's case.
11. It is my finding that the contention by the Respondent of piece rate employment is not proved and I find that the Claimant's position is the one to believe in view of the fact that Section 10 (7) of Employment Act states that where an employer fails to provide an employment

letter to an employee, in case of any dispute to the terms of the employment, the onus of disproving the terms of the contract lies upon the employer.

12. The Claimant stated that he was employed from 2010 to 2012 and was paid 15,000/= per month. I would take that to be the position.

13. There is no indication as to how this relation was terminated and the contention by the Respondent that he was dismissed in the proper position. The Respondent did not have reason to dismiss the Claimant and neither did he follow due process.

14. I find the dismissal of the Claimant unfair and unjustified. I therefore award the Claimant as follows:

1. 1month salary when of notice =15,000/=.

2. Salary for October 2012 = 6,923=.

3. Severance pay of 15 days for 2 years worked 15,000/=.

4. House allowance for 24 months =15% x 15000 x 24=54,000/=.

Total 90,923/=

5. Issuance of a Certificate of Service.

6. Costs of this case plus interest at Court rates with effect from the date of this judgement

Dated and delivered in open Court this 22nd day of March, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Keyonzo for Claimant – Present

Respondents - Absent