



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 775 OF 2015

(Before Hon. Justice Hellen S. Wasilwa on 30th May, 2018)

FREDRICK NDAMBUKI MUIA.....CLAIMANT

VERSUS

RAGOS FOOD INDUSTRIES LIMITED..... RESPONDENT

JUDGEMENT

1. The Claimant herein Fredrick Ndambuki Muia filed his claim in person on 7/5/2015 alleging wrongful and unfair termination of his services by the Respondent who also failed to pay him his terminal benefits.
2. The Claimant later instructed the firm of Nancy Khafafa to take up the case on his behalf.
3. The Respondents were duly served and return of service filed in Court but they never entered appearance nor did they file any defence.
4. This Court therefore ordered the case to proceed as an undefended claim.
5. The Claimant gave sworn evidence in Court and stated that he had been employed by the Respondents on 4/1/2010 as a casual worker. He was working as a Turn Boy loading the vehicle and delivering goods to various points and back. His salary was 11,100/= per month.
6. He avers that the Respondent deducted his NHIF and NSSF dues but never remitted them as expected.
7. He avers that while working for the Respondent, he was bereaved and he sought for time off to attend the funeral. He was given permission by his superiors. On coming back from the funeral he was informed that he had been fired. He was verbally dismissed on 21.3.2015.
8. He avers that he was not given any fair hearing before the dismissal hence this case. He seeks to be paid notice pay, leave pay for 21 days, salary for 21 days worked in April 2014, house allowance at 15% of the back pay for the period of employment, NSSF and NHIF deductions made but not remitted and damages for unfair termination all totaling 293,769.20/=.
9. The Claimant also filed his submissions where he reiterates his evidence.
10. I have considered the evidence and submissions of the Claimant. I note that the Claimant led evidence that he was an employee of the Respondent. He avers that he was employed as a casual employee of the Respondent and even was a member of NSSF and NHIF for which the Respondent made deductions.
11. The Claimant however failed to prove even the very basic of the existence of the employment relationship by not even producing his NHIF and NSSF statements to prove his contention. Despite the fact that he avers that the contract was oral, the Claimant failed to prove the existence of an employment relationship.
12. In my view the evidence adduced by the Claimant falls below the required standard. I dismiss the claim altogether with no orders as to costs.

Dated and delivered in open Court this 30th day of May, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Kirimi holding brief for Kafafa for Claimant – Present

Respondents – Absent