

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1079 OF 2015

CLINTON MASIKA ADOLI.....CLAIMANT

- VERSUS -

ISINYA ROSES LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 18th May, 2018)

JUDGMENT

The claimant filed the memorandum of claim on 26.06.2015 through Nyamwega Osoro & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) A declaration that the termination process as carried out by the respondent is unlawful and that during his employment with the respondent, he was not remunerated as required by law.
- b) Payment of Kshs. 389, 664.15 being a month's pay in lieu of notice Kshs. 9, 024.15; leave pay for 6 years Kshs. 54, 144.00; overtime pay Kshs. 174, 900.00; service pay Kshs. 27, 072.00; and 12 months' pay in compensation Kshs. 124, 524.00.
- c) Costs and interest.
- d) Any other relief the Honourable Court may deem fit to grant.

The respondent filed the memorandum of response on 07.03.2013 in person and prayed that the claimant's suit be dismissed as unjustified.

The claimant's evidence is that he was employed by the respondent on 01.07.2007 to 01.11.2013. That evidence contradicts the pleading at paragraph 3 of the memorandum of claim that the employment was from 01.07.2007 to 01.02.2014. A certificate of service filed for the claimant says he worked from 01.07.2007 to 01.11.2013.

The Court has considered the claims for pay for leave and overtime. The Court holds that they are in the nature of continuing injuries and a suit for such cause of actions must be filed within 12 months from cessation. Whether the claimant was terminated on 01.11.2013 or 01.02.2014, the Court returns that the suit was filed belatedly on 26.06.2015 and the two claims and prayers will fail.

The court has considered the conflicting pleadings and evidence by the claimant on the period of service. The court finds that such conflicting evidence and pleading cannot be trusted. The respondent's witness (RW) was consistent that the claimant worked in 2010 to 2011 at a time RW supervised the claimant who was a general worker. RW denied that the certificate of service filed for the claimant was genuine. The claimant failed to file his Equity bank account statement and a complete NSSF statement to show he had been in employment for the period as claimed. Once again the Court returns that the claimant's testimony was not credible and cannot be trusted. Thus the Court finds that as per the respondent's case, the claimant worked for the respondent as a general worker from 06.07.2010 to 04.07.2011 and deserted duty as from 05.07.2011. There was no evidence that the claimant worked for the respondent outside that period. Thus the Court returns that the claimant's case for unfair termination was unfounded and the prayer for service pay misconceived as he was a member of the NSSF. The claimant's case will therefore fail as unjustified.

In conclusion, the claimant's memorandum of claim is hereby dismissed with orders that the claimant will pay the respondent's costs of the suit.

Signed, dated and delivered in court at Nairobi this Friday 18th May, 2018.

BYRAM ONGAYA

JUDGE