



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1908 OF 2017

JOSEPH MAKERI WANJIRU..... CLAIMANT

- VERSUS -

SHEM KAMBO T/A PALS

RESTAURANT ENTERPRISES LIMITED RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 29th June, 2018)

JUDGMENT

The statement of claim was filed on 26.09.2017 through Kirubi Mwangi Ben & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) Payment of Kshs. 414, 000.00 being Kshs.15, 000.00 in lieu of one month notice; annual leave for 2 years Kshs.21, 000.00; unpaid salary for June 2017 Kshs. 15, 000.00; overtime 5 hours per day Kshs. 325, 000.00; public holidays Kshs. 14, 000.00; and unpaid salary arrears Kshs.24, 000.00.
- b) Payment of 12 months' salaries at Kshs.15, 000.00 per month making Kshs. 180, 000.00.
- c) Costs of the suit and interest.
- d) Any other or better relief the Honourable Court may deem fit to grant.
- e) Any other or better relief the Honourable Court may deem fit to grant.

Despite service the respondent did not enter appearance, file a response or attend at the hearing of the suit. The claimant testified to support his case. The Court has considered the evidence and the pleadings and makes the following findings:

- 1) The claimant has established that he was employed by the respondent as a chef from 02.01.2012 to 02.01.2013 at Kshs. 17, 000.00 per month. He was later reemployed from 02.06. 2016 to 22.06. 2017 in the same capacity at Kshs. 15, 000.00 per month and it was his case that he was to be paid the balance of Kshs 2000.00 later by way of arrears. The Court finds that there were two broken or separate contracts of employment, each running for one year.
- 2) The claimant testified he was terminated without notice and he is awarded one month pay in lieu of termination notice making **Kshs. 15, 000.00** as prayed for.
- 3) The claimant did not testify about the details of the termination other than that there was no notice. In such circumstances, the Court finds that he has not provided sufficient evidence to show that the termination was unfair. In any event, the Court returns that the one month pay in lieu of notice would be sufficient in this case of otherwise wrongful termination considering that the claimant had served for only 12 months after the reemployment.
- 4) The claimant while stating that he worked overtime and he was owed monthly Kshs. 2000.00 in unpaid salaries in the 2nd year of service, he has claimed and pleaded that he should be paid Kshs. 15, 000.00 in lieu of termination notice. The Court returns that the parties agreed upon Kshs. 15, 000.00 as monthly pay for the work performed. In view of the pleading for Kshs. 15, 000.00 per month, the Court returns that the same was the agreed pay and on a balance of probability the claimant has failed to establish the claim for salary arrears and overtime. He is bound by his own pleadings. While making that finding the Court returns that there was no evidence of a grievance on overtime and salary arrears while the contract subsisted and on a balance of probability, parties agreed on Kshs. 15,000.00 for work done and for all hours worked after the reemployment.

5) The Court returns that the claimant has established the claim on work on public holidays and is awarded **Kshs.14, 000.00** as prayed for.

6) The Court returns that the claimant is entitled to annual leave pay as prayed for and is awarded **Kshs. 21, 000.00**.

7) The claimant is awarded salary for 22 days worked in June 2017 making **Kshs.11, 000.00**.

In conclusion judgment is hereby entered for the claimant against the respondent for:

a) Payment of **Kshs.61, 000.00** by 01.08.2018 failing interest to be paid thereon at Court rates from the dated of this judgment till full payment.

b) The respondent to pay costs of the suit.

Signed, dated and delivered in court at Nairobi this Friday 29th June, 2018.

BYRAM ONGAYA

JUDGE