



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO 777 OF 2012**

**PETER MWANZIA MAWIA.....CLAIMANT**

**VERSUS**

**KENYA CUTTINGS LIMITED.....RESPONDENT**

**JUDGEMENT**

1. By memorandum of claim filed on 9<sup>th</sup> May, 2012 the claimant averred that he was employed by the respondent on 8<sup>th</sup> November, 2002 as a member of the spray department and worked there until his services were terminated. At the time of the termination his monthly salary was Kshs 6,824/= per month.

2. According to him on 30<sup>th</sup> May, 2011 the respondent through a letter dated 31<sup>st</sup> March, 2011 terminated his service for the reason that his contract with the respondent had expired. The respondent on its part pleaded that the respondent was employed as a general worker at a salary of Kshs 6,824 and a house allowance of Kshs 1,500. The contract was to run for a fixed period of 3 months.

3. On 31<sup>st</sup> May, 2011 the respondent informed the claimant that his contract had come to an end as per the contractual terms and that the respondent was not intending to extend the period due to unavailability of work. According to the respondent the claimant paid his salary for days worked up to 31<sup>st</sup> May, 2011 and out standing leave as at 31<sup>st</sup> May, 2011 less any outstanding liabilities with the respondent.

4. At the hearing, the claimant repeated most of the allegations contained in the memorandum of claim. He further stated that he was not given a reason for dismissal and that his contract was open ended. In cross-examination he denied ever seeing the contract of employment shown to him by counsel for the respondent. The court noted the demeanor of the claimant as evasive. He further denied being paid for the month of May but when his attention was drawn to the payslip for May 2012 attached to his memorandum of claim he denied knowledge of the same. The respondent elected not to call any evidence.

5. The contract of employment between the respondent and the claimant dated 1<sup>st</sup> March, 2011 provided under clause 3 that it was commencing on 1<sup>st</sup> March, 2011 and terminating on 31<sup>st</sup> May, 2011. The contract further stated that the claimant's service would end on the contract date listed and if there was any additional work, the respondent would request the claimant to sign another contract.

6. The contract further provided that the respondent made no commitment to the claimant for a long term employment other than the period for which the contract was valid and was not obligated to re-employ or alter the claimant's status at the end of any contract period. By a letter dated 31<sup>st</sup> May, 2011 attached to the claimants memorandum of claim, the respondent informed the claimant that his contract which ends on 31<sup>st</sup> May, 2011 would not be renewed.

7. The letter further advised the claimant of dues to be paid to him upon the expiry of his contract. These dues were paid to the claimant as per the payslip attached as annexure 2 to the claimant's memorandum of claim. The claimant denied knowledge of this document despite the fact that it was attached to his own memorandum of claim.

8. The burden of proof is cast upon a person who lodges a claim against another to prove such claim for the court to make a finding in his favour. The claimant herein did not strike me as a witness for truth. It was strange that he would deny knowledge of documents attached to his very own memorandum of claim. The claimant in my view was well aware that he was in a fixed term contract with the respondent and further that there was no obligation on the respondent to renew his contract.

9. This claim is therefore found to be frivolous and is hereby dismissed with costs.

10. It is so ordered.

Dated at Nairobi this 20<sup>th</sup> day of July, 2018

**Abuodha J. N.**

**Judge**

**Delivered at Nairobi this 20<sup>th</sup> day of July, 2018**

**Abuodha J. N.**

**Judge**

**In the presence of:-**

..... for the Claimant

..... for the Respondent