



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 863 OF 2013

GUYO DOYO HARIFATA.....CLAIMANT

VERSUS

SOBHAG SHAH.....RESPONDENT

JUDGMENT

Introduction

1. This claim is brought by Guyo Doyo Harifata against Sobhag Shah. The claim is contained in a Memorandum of Claim dated 7th June 2013 and filed in court on even date.

2. The Respondent did not file a reply. The Court therefore heard the Claimant *ex parte* on 18th April 2018.

The Claimant's Case

3. The Claimant states that he was employed by the Respondent as a watchman on 5th March 2012 at a monthly salary of Kshs. 6,000. He claims to have been underpaid.

4. The Claimant further claims that he was not paid any salary from 1st November 2012 until 24th March 2013 when his employment was terminated. He contends that the termination of his employment was unlawful and unfair. He adds that he worked for six days per week from 6.00 am to 6.00 pm and that he also worked during public holidays.

5. The Claimant's claim is as follows:

- a) Underpayment.....Kshs. 37,505.30
- b) Salary not paid for 5 months @ 11,006/74.....55,033.70
- c) 1560 hours overtime worked during weekdays.....66,363.45
- d) 1248 hours weekly rest days overtime.....53,090.75
- e) 216 hours worked on public holidays.....9,188.80
- f) 29 days annual leave.....12,276.75
- g) 1 month's salary in lieu of notice.....11,006.74
- h) 18 days' severance pay for 1 year.....6,026.50
- i) 12 months' salary in compensation.....132,080.90
- j) Costs plus interest

Findings and Determination

6. This being an undefended claim, the first issue for determination is whether the Claimant has established an employment relationship between himself and the Respondent.

7. Apart from his word, the Claimant did not adduce any corroborative evidence. Even assuming that his employment was by way of oral agreement, the Claimant ought to have called an independent witness to corroborate his testimony. Having failed to do so, the Court finds that he failed to prove the existence of an employment relationship which would have been the beacon of his claim.

8. In the circumstances, the Claimant's entire claim fails and is dismissed with no order for costs.

9. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 2ND DAY OF JULY 2018

LINNET NDOLO

JUDGE

DELIVERED AT NAIROBI 18TH DAY OF JULY 2018

MAUREEN ONYANGO

JUDGE

Appearance:

Mr Okemwa for the Claimant

No appearance for the Respondent