



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT
AT KISUMU

CAUSE NO. 177 OF 2013

(Before Hon. Lady Justice Maureen Onyango)

JAMES RANDIKI ONYUKA.....CLAIMANT

VERSUS

LAWRENCE MWANGI KARANJA.....1ST RESPONDENT

JOSHUA TURMAN ONGWARA T/A LAKE

INSTITUTE OF TROPICAL MEDICINE.....2ND RESPONDENT

JUDGMENT

The claimant was employed by the respondent as a librarian on 1st September 2008 on a three year renewable contract. The contract was renewed by letter dated 8th September 2011. The claimant resigned from employment on 31st March 2013 after serving one month's notice. At the time of resignation the claimant had not been paid salary from the month of September 2012 to March 2013.

In the memorandum of claim dated 25th June 2013 and filed on 26th June 2013 and amended on 17th April 2014 the claimant prays for the following remedies –

a. Unpaid salaries	Kshs.158,966
b. Leave earned but not taken	Kshs.62,356
c. Gratuity/service pay	Kshs.29,250
d. Special teaching allowance	<u>Kshs.108,000</u>
Sub-Total	Kshs.358,572
Less Paid	<u>Kshs.38,276</u>
TOTAL	Kshs.320,296
e. Certificate of service	
f. Costs of the suit	
g. Interest on (1), (b), (c), (d) and (f) above	

The respondent filed an amended memorandum of response in which it admits employing the claimant in 2008. It further admits owing the claimant the sum of Kshs.168,966 and having made payments to the tune of Kshs.48,276 as part payment.

The respondent however denies that the claimant is entitled to the other prayers in the claim.

At the hearing of the case the claimant testified on its behalf while the respondent decided to rely entirely on its pleadings. Parties thereafter filed written submissions.

In the submissions filed on behalf of the respondents they raise only one issue, that the claimant filed suit against the wrong person, that Lake Institute of Tropical Medicine is a limited liability company.

Since the averments of the claimant have not been controverted the only issues for determination are whether the claimant sued the wrong person and if he is entitled to the prayers sought.

Legal Personality of Respondent

Among the documents filed by the claimant in his bundle of documents is a certificate of registration which certifies that LAWRENCE MWANGI KARANJA and JOSHUA TURMAN ONGWARA were carrying on business under the business name of LAKE INSTITUTE OF TROPICAL MEDICINE at BLOCK NO.4/135, MITO JURA ROAD, KISUMU MUNICIPALITY. The certificate is dated 26th March 2004. In the pleadings filed by the respondent there is no denial of the identity of the respondents. Indeed the opening sentence of the memorandum of response reads as follows –

“The respondents herein, **Lawrence Mwangi Karanja and Joshua Turman Ongwara T/A Lake Institute of Tropical Medicine** state as follows: -“

The certificate of incorporation referred to in the respondent’s submission was filed as part of the respondents’ supplementary list of documents. Having not called any witness to produce its documents, the document was never admitted as evidence. In any event, the same is for Lake Institute of Tropical Medicine Limited Kisumu incorporated on 28th May 2013. It is not the same entity that employed the claimant and whom the claimant resigned from. It has not been submitted that the business name under which the respondents operated was converted, deregistered or taken over by Lake Institute of Tropical Medicine Kisumu Limited.

I find that the respondents were properly sued in this claim.

On the issue whether the claimant is entitled to the prayers sought, the prayer for unpaid salaries is already admitted by the respondents and is therefore not an issue.

The claimant further prayed for leave for 2009 and 2011 as he proceeded for leave in 2010 and 2012 only. The respondents only aver that the claimant did not request for the leave. Leave is an entitlement of an employee and it is the duty of an employer to compute leave due as provided under Sections 10(3)(a)(1) and 74(1)(f). It is the employer who should therefore inform an employee when his leave falls due. The fact that an employee does not apply for leave does not disentitle the employee to the leave. The respondent having not produced the claimant’s records of leave due as at the time of resignation, I find by virtue of Section 10(7) that the claimant is entitled

to leave for 2009 and 2011 at 25 days per year as provided in clause L9 of Staff Rules and Regulations for the respondent institution annexed as appendix 2 of claim.

The claimant further prayed for gratuity/service pay. The same is provided for at clause L13 which states that employees put on contract are eligible for gratuity. The claimant is therefore entitled to gratuity.

The claimant further prayed for special teaching allowance. The claimant’s letter of renewal of contract as a lecturer does not provide for special teaching allowance. There is no evidence that the claimant ever raised any issue about the teaching allowance before his resignation.

I find that the claimant has not proved that he is entitled to the same and the prayer is accordingly dismissed.

Conclusion

In conclusion I award the claimant the following –

- | | |
|---|-------------------------|
| i. Unpaid salaries less payments received | Kshs.120,690.00/= |
| ii. Annual leave for 50 days | Kshs.45,833.30/= |
| iii. Gratuity/service pay | <u>Kshs.29,250.00/=</u> |

TOTAL **Kshs.195,773.30/=**

- iv. The claimant is also entitled to Certificate of service

The respondents shall pay the claimant’s costs for this suit. The decretal sum shall accrue interest at court rates from date of judgment.

DATED AND SIGNED AT NAIROBI ON THIS 21ST DAY OF JUNE 2018

MAUREEN ONYANGO

JUDGE

DATED AND DELIVERED AT KISUMU ON THIS 12TH DAY OF JULY 2018

MATHEWS NDERI NDUMA

JUDGE