



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 198 OF 2014

(Before Hon. Justice Hellen S. Wasilwa on 10th July, 2018)

FESTO VIDOLO MUGULI.....CLAIMANT

VERSUS

BOARD OF GOVERNORS,

ST GEORGES PRIMARY SCHOOL.....RESPONDENT

JUDGEMENT

1. The Claimant filed suit on 10th February 2014 through the firm of Wamalwa Abdi & Co. Advocates seeking damages for unlawful termination, unpaid wages and allowances as well as terminal dues. He avers that on or about 10th February 2011, the Respondent employed him as a School Bus Driver at a monthly salary of Kshs. 16,000.

2. He states that during his period of employment he executed his duties diligently and with outmost commitment and that during his employment period, the Respondent did not employ a Bus Conductor nor a Mechanic to aid him in his daily duties thus overworking him contrary to the Employment Act.

3. He further avers that the Respondent subjected him to work overtime and during weekends without remunerating him for the excess time and work done on the said dates/weekends, an act that is contrary to the Employment Laws. He states that despite his commitment to work, the Respondent did not pay him his monthly wages for the months of February, April, July, August and September 2011 resulting in outstanding wage of Kshs.80,000 which caused him to resign in January 2012.

4. He further state that the Respondent having failed to pay him his salaries he is deemed to have constructively dismissed him from employment without notice as a result of which he claims the sum of Kshs.16,000/= as notice in lieu of termination. He also avers that despite demand and notice of intention to sue being issued, the Defendants have failed to admit liability.

5. The Respondent filed their Statement of Defence where they denied each and every allegation of fact and law set out in the claim. They also denied the issues set out in the claim and put the Claimant to strict proof as well as having employed the Claimant as a School Bus Driver with a monthly salary of Ksh.16,000/= or at all but rather that the claimant performed casual jobs for them hence they did not owe him any money and puts him to strict proof thereof.

6. The Claimant replied to the Memorandum of Defence where he avers allegations contained in the Memorandum of Defence consist of admissions.

Submissions

7. The Claimant filed his submissions where he submits that he falls under the category of an employee as envisaged under the Employment Act 2007 as there is no doubt from his testimony that he was employed as a Driver by the Respondent. The Respondent did not produce any evidence before this Court to disapprove his assertions. On his part, he has presented the work register book/ticket that he used to sign every evening after work to prove that he indeed worked for the Respondent.

8. He further avers that he resigned from his employment as a result of the conduct of the Respondent as the Respondent refused to pay him his salary which ignited actions that caused him to resign. He states that he is entitled to compensation arising from his employment and terminal dues as well as unpaid salaries.

9. He therefore submits that he has proved his case on the standard required by law and prays that this Court will find that he was an employee of the Respondent and is entitled to the claim for unpaid wages and work done during weekends and to award him damages as prayed in his Memorandum of Claim.

10. I have considered the averments of both parties plus the submissions filed herein. From the pleadings of the Claimant, he was employed by the Respondent on 10th February 2011. He was not issued with any appointment letter. However, the daily work ticket submitted in Court shows that he worked for Respondent for some period. He avers that he was not paid his salary for February, April, July, August and September 2011 and so resigned in January 2012.

11. The Respondent aver that the Claimant was a casual worker and was paid for the work he performed.

12. The work ticket produced in Court shows that the Claimant worked on 21/5/2011, 23/5/2011, 24/5/2011, 25/5/2011, 27/5/2011, 30/5/2011, 31/5/201 and 1/6/2011.

13. He also worked on 5/10/2011, 11/10/2011, 12/10/2011, 13/10/2011 and 25/10/2011.

14. There is no indication that he worked continuously during the period and even the total number of days served during the period are only 13 days.

15. The days worked and their inconsistency do not reveal any permanent employment relationship. I agree with the Respondent that the Claimant was a casual worker and therefore his claim is untenable in terms of prayers sought.

16. I dismiss this claim accordingly with no order as to costs.

Dated and delivered in open Court this **10th day of July, 2018.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Parties