



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE 602 OF 2012

PATRICK MUEMA MUNYOKI.....CLAIMANT

VERSUS

PARADISE HOTEL LTD.....1ST RESPONDENT

SUDHIR PATEL.....2ND RESPONDENT

JUDGEMENT

1. By a memorandum of claim filed on 12th April, 2012 the claimant averred among others that he was employed by the respondents as a supervisor at the respondent's hotel located in Juba. The contract of employment was executed in Nairobi. The contract of employment was for one year renewable on mutually agreed terms. The claimant's monthly salary as pleaded was Kshs 35,000/=. The respondent was to provide accommodation and meals and further the claimant was entitled to three weeks of leave after six months in Juba.
2. The claimant pleaded that after executing his contract and reporting to duty the respondent failed to pay him his salary for the months of November and December, 2008 and for days worked in January, 2009 totaling to Kshs 87,500/=. The claimant further pleaded that he was dismissed on 15th January, 2009 without any explanation or notice.
3. In response to the claim, the respondent averred among others that the 1st respondent is a limited liability company incorporated in South Sudan. The 2nd respondent further averred that he was the managing director of the 1st respondent and had been sued merely because he signed the claimant's letter of appointment.
4. The respondent further averred that a claim had been made by the claimant and another on 22nd January, 2009 to the Juba County Labour Office against the 1st respondent and its General Manager a Mr Bosco Taban dealt with the claimant's claim and paid him and his colleague Mr Jackson Anjere through the Juba county Labour Office.
5. The respondent further pleaded that upon payment of the claimant's and his colleagues dues by the Juba County Labour Office, the latter resumed work but the claimant did not. The claimant according to the respondent returned to Nairobi without knowledge and or consent of the respondent.
6. During oral hearing the claimant further stated that his claim was for two and half months salary accrued out of work. He further stated that the respondent picked him from a restaurant in Westlands and took him to Juba where he worked for four months and started facing problems over payment of his salary. According to him, he was paid for September and October only. The payment was made by Tito in Juba and not before the Juba Labour Office.
7. The respondent's 1st witness Mr Sudhir Patel stated that the claimant was paid by Mr Taban, the General Manager of the respondent. According to him, the claimant was paid USD 2372 on account of outstanding salary for the period he claimed. According to him, the claimant's services were not terminated. The claimant decided to leave after being paid his dues.
8. In cross-examination he stated that the evidence of payment was with the accountant in Juba and that he did not have the records in court. The respondent's 2nd witness Mr Jackson Anjere informed the court that he knew the claimant as his colleague in Juba and that the claimant used to work as a head waiter. According to him, they were paid all their dues in Juba at the Labour Office.
9. In cross-examination, he stated that he saw the claimant being paid and that the payment was made in cash and each person signed for it. The respondent's 3rd witness Mr Bosco Taban stated that the claimant was paid his dues in cash at the Juba Labour Office. According to him, the claimant filed case in Juba and was paid as a consequence.

10. It is common ground that the claimant was paid. The point of variation however is whether the payment was in full and final settlement or not. According to the claimant he was only paid for September and October and that the payment for November, December and days worked in January were outstanding. The respondent's position however is that the claimant was paid USD 2372 representing the entire period he claimed.

11. The claimant in his memorandum of claim seeks an order to be paid by the respondent the sum of Kshs 145,875.53 comprising of salary for November and December, 2008 and 15 days worked in January, 2009. The claimant was employed in Juba, South Sudan by a Company incorporated under South Sudan Laws. The mode of payment was either in Sudanese currency or USD as conceded by the parties. The claim in Kenya shillings does not therefore have any basis since the unit of currency was in American dollars. The court can only entertain the Kenya shilling equivalent however this was not pleaded and the indicative exchange rate quoted.

12. This brings me to the issue of jurisdiction raised earlier in this suit. As stated the respondent is a South Sudanese Company Incorporated under the laws of South Sudan. It matters not that all or some of the directors are Kenyan nationals. Further the contract of employment was performed in South Sudan and the dispute herein admitted for adjudication by South Sudanese Labour Office. There have been allegations of payment of the sums claimed before the South Sudanese Labour Office. They are best place to accept or refute these allegations.

13. To place this court in a position to resolve a dispute of this nature would be inconvenient and most likely yield injustice to the parties. The court would in the circumstances decline jurisdiction and order the suit struck out with no order as to costs.

14. It is so ordered.

Dated at Nairobi this 21st day of September, 2018

Abuodha J. N.

Judge

Delivered at Nairobi this 21st day of September, 2018

Abuodha J. N.

Judge

In the presence of:-

.....for the Claimant

.....for the Respondent.