



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

CAUSE NO 918 OF 2016

MOHAMED ALI ADAN.....CLAIMANT

VERSUS

ABDIRIZAK MUSTAFA HUSSEIN

T/A ROADSIDE AUTO TYRES.....RESPONDENT

JUDGMENT

Introduction

1. By his Memorandum of Claim dated 2nd December 2016 and filed in court on even date, the Claimant has sued the Respondent for unfair termination of employment and failure to pay terminal dues.

2. The Respondent filed a Response on 27th April 2017 but did not call any witnesses. The Claimant testified on his own behalf. Both parties filed written submissions.

The Claimant’s Case

3. The Claimant states that he was engaged by the Respondent as a salesman from 1st August 2015. He earned a monthly salary of Kshs. 31,000 which was paid to him by voucher. He was not issued with a written contract of employment.

4. The Claimant avers that he worked beyond normal working hours without compensation and that he never went on leave.

5. On 21st November 2016, the Claimant was instructed by the Respondent to hand over the keys and not to report to work the following day. He was not given any reason for the termination. The following day, 22nd November 2016, the Claimant reported to work but was locked out.

6. The Claimant now claims the following:

- a) Salary balance for November 2016.....Kshs. 11,700.00
- b) One month’s salary in lieu of notice.....31,000.00
- c) Accrued leave for 15 months.....35,769.20
- d) Overtime worked on Sundays.....99,855.80
- e) Overtime worked on weekdays.....239,653.80
- f) 12 months’ salary in compensation.....372,000.00
- g) Certificate of service
- h) Costs plus interest

The Respondent's Case

7. In its Response dated 26th April 2017 and filed in court on 27th April 2017, the Respondent states that he and the Claimant are cousins. The Respondent adds that the Claimant used to go to his shop where he would sometimes assist in selling goods.

8. The Respondent avers that due to the strong family connection, the relationship between himself and the Claimant was more of a partnership rather than an employer-employee relationship. The Respondent would occasionally offer lunch or a stipend of approximately Kshs. 500 to the Claimant. The Respondent denies employing the Claimant or paying him a monthly salary.

Findings and Determination

9. The first issue for determination in this case is whether there was an employment relationship between the parties capable of enforcement by the Court. The Claimant states that he was employed by the Respondent as a salesman at a monthly salary of Kshs. 31,000.

10. Apart from his word however, the Claimant did not adduce any corroborative evidence. He told the Court that he was paid by way of vouchers which were retained by the Respondent.

11. It seems to me that there may have been some work arrangement between the parties but as held by this Court in *John Kamau Mburu v Program for Appropriate Technology in Health (PATH) & another [2015] eKLR*, not every work relationship creates an employment relationship. This is a specialized court exercising specialized jurisdiction in employment and labour matters. With specific reference to employment matters, the existence of an employment relationship is a prerequisite.

12. If the Claimant wanted the Court to believe that he was indeed an employee of the Respondent, he ought to have served notice on the Respondent to produce his employment records. Having failed to do so, the Court can only conclude that there were no such records.

13. I will say nothing about the bulk printed text messages produced by the Claimant as they were not accompanied by a transcription certificate and therefore bear no probative value.

14. Ultimately, I find and hold that there was no employment relationship between the parties capable of enforcement by this Court. The result is that the Claimant's entire claim collapses and is dismissed.

15. In light of the family relationship between the parties as disclosed by the Respondent in his Response, I direct that each party will bear his own costs.

16. It is so ordered.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 25TH DAY OF OCTOBER 2018

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JUDGE

Appearance:

Miss Katu for the Claimant

Mr. Matheka for the Respondent