



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 476 OF 2013

(Before Hon. Lady Justice Hellen S. Wasilwa on 20th December, 2018)

KENNETH AIDA JOSEPHCLAIMANT

VERSUS

THE HON. ATTORNEY GENERAL RESPONDENT

JUDGMENT

1. The Claimant herein filed his Memorandum of Claim on 8/4/2013 through the firm of S.M. Keyonzo Advocates.
2. The Claimant's claim is that he was employed by the Permanent Secretary Ministry of National Cohesion and Constitutional Affairs vide a letter dated 13/1/2011 as a Driver with the Respondent in accordance with terms and conditions set out in circular Ref. No. OP-CAB/2/12/A dated 22.6.2005 from the Head of Civil Service.
3. Vide a letter dated 12.2.2013, the Chief Executive Officer of the Respondent terminated the Claimant's temporary employment with effect from 12.2.2013 with a promise that the Claimant would be paid salary upto and including 15th March 2013.
4. At the time of termination, the Claimant was earning Kshs.42,148/-.The claim by the Claimant is for payment of Kshs.1,245,419 as enumerated in paragraph 7 of the claim.
5. The Claimant gave his sworn evidence in Court and on cross-examination, he indicated that the letter of appointment indicated that he was engaged on temporary basis. He also stated that he was terminated because the contract expired. He stated that the work ticket shows that the work was sanctioned by the office.
6. The Claimant had indicated that he used to be given a pay slip every month and he submitted his pay slips from June 2012 to February 2013 as exhibits showing he was earning 52,000/= basic pay.
7. From the appointment letter, the Claimant was appointed as a Driver on temporary basis and was paid 2,000/= per day. The termination letter indicated that the temporary appointment was to end on 13th January 2012 as the contract was coming to an end.
8. The Claimant also filed work ticket copies to show the vehicle movement as he worked for Respondent.
9. The Respondent on their part filed their Defence on 20/5/2013 and admitted that the Claimant was employed as alleged but paid daily wage of 2000/= based on number of days worked.
10. The Respondent avers that they terminated the temporary employment on 12.2.2013 and paid all that was due to the Claimant.
11. The Respondent deny that the Claimant is entitled to prayers sought. They contend that leave not taken within any year was forfeited.
12. The Respondent also aver that the Claimant was not authorized to do any work outside the work schedule.
13. The parties filed their respective submissions where they reiterate their evidence submitted above.
14. I have considered the evidence and submissions filed. I note that the Claimant was employed strictly on temporary basis as a Driver with

the Respondent. Temporary employment is defined by Blacks Law Dictionary Tenth Edition at page 641 as “work for specific need or fixed duration, usually agreed on beforehand”.

15. In case of the Claimant, the fact that the appointment was on temporary basis was communicated to him before hand. It is also common knowledge that the Respondent was a temporary constitutional commission whose work was to implement the Constitution and which was dissolved after completing its mandate.

16. The Claimant would not therefore have expected to serve the Respondent indefinitely. The issue of wrongful termination of the Claimant would therefore not arise when he was informed that his contract had expired.

17. What the Claimant is therefore entitled to are any dues not paid during the subsistence of the contract.

18. He sought payment of his leave not taken for 2 years. I will find for him on this limb but only to the extent of 1 year leave as leave not taken during any financial year was forfeited under Government regulations.

19. On issue of overtime pay, the Claimant sought to rely on motor vehicle work tickets as proof that he worked overtime.

20. From the work tickets, it is apparent that the Claimant worked beyond the number of hours allowed in a day. He started his day sometime by 4 am and ended at 8 pm in the night. It is apparent that he worked overtime beyond the day period expected.

21. The Respondent have submitted any work done beyond the hours stipulated was not sanctioned. However, the work tickets produced in Court are signed by the authorized officer and was therefore sanctioned.

22. I therefore find for the Claimant in terms of overtime pay and award him as prayed for 1,579 hours = 505,776/=

Total awarded = 547,924/=

23. The Respondent will also pay costs of this suit plus interest at Court rates with effect from the date of this judgment.

Dated and delivered in open Court this 20th day of December, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Kioko for Respondent – Present

Amulio for Claimant – Present