



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 337 OF 2017

(Before Hon. Justice Mathews N. Nduma)

KENNETH L. INDUSA.....CLAIMANT

VERSUS

LAKE VICTORIA NORTH WATER SERVICES BOARD.....RESPONDENT

RULING

1. The Claimant commenced suit against Lake Victoria North Water Services Board alleging inter alia that –
 - a. He was employed by the Respondent as a commercial and finance manager on a three year fixed contract on 21st January, 2013.
2. The contract expired and was renewed for a further three years with effect from 4th February, 2016 up to 3rd February, 2019.
3. On 16th May, 2016, whilst the contract with the Respondent persisted, the Claimant was appointed Acting Managing Director Kakamega – Busia Water Supply.
4. The Claimant alleges, that in blatant breach of his contract of employment, the Claimant received a letter jointly authored by the Acting Managing Directors of Kakamega County Water and Sanitation Company Limited purportedly deploying the Claimant to Busia Water and Sewerage Services Co. Limited.
5. The Claimant did not move but continued to work for Respondent. However the working conditions for the Claimant have become into intolerable since he is hardly paid his salary on time or at all and is not assigned duties despite persistence of the contract of service.
6. This is the cause of action by the Claimant who seeks a declaration that he has been constructively dismissed and that he be paid arrear salaries and allowances and damages for constructive dismissal.
7. This is a clear cause of action by the Claimant against the Respondent. The Respondent needs to file a statement of defence and stop engaging in dilatory tactics so that the court can determine the real issues.
8. The submissions put forth by the Claimant as to what constitutes constructive dismissal are pre-mature. The Respondent in the court's considered view has been properly sued. There is no case of mis joinder or non joinder.
9. The application to strike out the suit dated 4th December, 2017 is dismissed with costs.

Dated, Delivered and Signed in Kisumu this 20th day of December, 2018

Mathews N. Nduma

Judge

Appearances

M/s Adongo for Respondent/Applicant for the Claimant

Mr. Waweru for Claimant/Respondent

Chrispo – Court Clerk