



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO 1093 OF 2011

PETER NJOROGE KAMAU.....CLAIMANT

VS

THE AGA KHAN HEALTH SERVICES T/A

THE AGA KHAN UNIVERSITY HOSPITAL NAIROBI.....RESPONDENT

JUDGMENT

Introduction

1. By a Statement of Claim dated 26th May 2011 and filed in court on 7th July 2011, the Claimant sued the Respondent for unpaid dues. The Respondent filed a Memorandum of Reply on 3rd August 2011.
2. The matter came up for hearing before me on 22nd November 2018 during the Nairobi Station Service Week. The Claimant testified on his own behalf and the Respondent called its Manager-Employee Relations, Dorothy Odero.

The Claimant’s Case

3. The Claimant was employed by the Respondent vide contract of employment dated 9th March 1986. The Claimant worked until February 2010 when he resigned.
4. He now claims unpaid dues as follows:

- a) Transport (from Aga Khan to Kingeero shift 3 pm – 9 pm
May 2003-December 2003).....Kshs. 1,450
- b) Overtime for 56 hours (May 2003-December 2003).....16,576
- c) Transport (June 2006-February 2010).....55,700
- d) 1 extra hour (June 2006-February 2010).....120,342
- e) Cleaning casualty/pavilionfor 3 years
2 months & 10 days (June 2006-December 2010).....470,695
- f) Costs plus interest

The Respondent’s Case

5. In its Memorandum of Reply dated 1st August 2011 and filed in court on 3rd August 2011, the Respondent states that under his contract of employment, the Claimant was only to work for 42 hours per week and that due to the nature of his work, he was expected to be flexible about the hours.

6. The Respondent further states that upon confirmation of employment, the Claimant's leave entitlement, termination notice and other benefits were in accordance with the Collective Bargaining Agreement as amended from time to time.
7. The Respondent avers that the Claimant resigned by his letter dated 1st September 2009 upon which he was paid all monies due to him.
8. The Respondent's case is that the Claimant's claim is short of merit and should therefore be dismissed with costs.

Findings and Determination

9. The single issue for determination in this case is whether the Claimant has proved his claim for unpaid dues as pleaded in the Statement of Claim. With regard to the claim for transport allowance, the Claimant told the Court that he used to report to work early and would therefore not use the official transport provided by his employer. He however did not adduce evidence to prove that first he was within the category of employees entitled to official transport and second whether he actually incurred the expense claimed.
10. On overtime, the Claimant stated that he had been instructed by the Pharmacy Manager to work beyond his normal hours of work. The Respondent's Manager - Employee Relations, Dorothy Odero testified that there was no record of any extra hours worked by the Claimant and the Claimant himself did not provide any such record.
11. Further, the Claimant did not adduce any evidence in support of his claim that he performed both orderly and cleaning duties.
12. The Claimant's claims all fall within the category of special damages which must be specifically pleaded and proved. The Claimant failed to prove any of the claims which therefore fail and are dismissed.
13. Each party will bear their own costs.

DATED AND SIGNED AT MOMBASA THIS 17TH DAY OF DECEMBER 2018

LINNET NDOLO

JUDGE

DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER 2018

MAUREEN ONYANGO

JUDGE

Appearance:

Mr. Ongwae h/b Njugi for the Claimant

Mrs. Omondi for the Respondent