



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE 1480 OF 2013

(Before Hon. Lady Justice Maureen Onyango)

JIMI NHLAPO MASEGE.....CLAIMANT

VERSUS

AVIATION AND AIRPORT SERVICES WORKERS

UNION (KENYA) Formerly known as AVIATION

AND ALLIED WORKERS UNION (K).....RESPONDENT

JUDGMENT

The claimant filed suit against the respondent claiming dues arising out of a contract of employment entered into on 5th February 2011, which he claims was never honoured.

At the time of filing suit the claimant was the respondent's Branch Secretary and was entitled to payment of salary and allowances from the date of employment which he alleges the Respondent never paid. He breaks down his claim against the Respondent as:

1. Salary	-	75,000.00
2. House allowance	-	30,000.00
3. Transport allowance	-	15,000.00
4. Leave allowance	-	10,000.00

It is the claimant's case that he was entitled to a contract gratuity of 12% of his gross annual earnings. He prays for the claim to be allowed.

The Respondent was served with the Claim but did not enter appearance or file defence. The respondent further did not attend court for hearing or file submissions. The case thus proceeded undefended.

When the matter came up for hearing the Claimant led evidence that he was elected as the Respondent's branch secretary in February 2011, and during registration his name was left out. He approached the Court through Cause 161 of 2011 and judgement was delivered on 17th May 2013 ordering that he be registered as the branch secretary within 7 days of the judgement.

Following the Judgment, the Respondent issued the Claimant with an appointment letter dated 14th June 2013, effective 5th February 2011 for a period of 5 years. That his claim in Court relates to the period between 5th February 2011 and 13th June 2013, when he was working and not being paid. He prayed for the claim to be allowed and that the Respondent be ordered to settle the outstanding dues.

Submissions

It is submitted that under section 18 of the Employment Act, 2007, an employer is obligated to pay salary to an employee at the end of each month when such payment is due. That section 20 also entitles an employee to an itemised statement of his payment in form of salary. That the letter of employment attached to the Memorandum of Claim conforms to the section.

It is submitted that the respondent has wrongfully withheld the Claimant's pay and thus the Court should allow the Claim.

Determination

Whether the Claimant is entitled to the claim of unpaid dues under the contract

The Claimant signed a contract drawn by the Respondent on 14th June, 2013, which was effective from 5th February, 2011. The Respondent however did not pay the Claimant his dues for the period between 5th February 2011 and 14th June, 2013 despite the Claimant having worked as required. The Respondent did not controvert this evidence.

Section 109 of the Evidence Act provides that:

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

The claimant's case having been uncontroverted and further the claimant having produced his letter of appointment as evidence of his entitlement, judgment is hereby entered for the claimant against the respondent as follows–

1.... Salary	Kshs.2,400,000
2.... House allowance	Kshs.960,000
3.... Airtime allowance	Kshs.480,000
4.... Annual leave travelling allowance	Kshs.20,000
5.... Gratuity t 12% of gross earnings from 5 th February 2011 to 13 th June 2013	Kshs.436,800
Total	Kshs.4,296,800

The respondent shall also pay costs of the claim. The decretal sum shall attract interest at court rates from date of judgment until payment in full.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 14TH DAY OF DECEMBER 2018

MAUREEN ONYANGO

JUDGE