



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 916 OF 2012

ROSEMARY A. IMBAYI AND HUMPHREY BUSENA

(Legal Representatives of the Estate of Jacob Auta Busena.....CLAIMANTS

VS

CENTURY DRYCLEANERS LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. This claim was originally filed by Jacob Auta Busena (now deceased). Pursuant to a limited grant of Letters of Administration *Ad Litem* issued by **R.E Ougo J** on 28th February 2017, an order of substitution was made by **NdumaJ** on 15th May 2017.

2. The matter subsequently came up for hearing before me during the Nairobi Station Service Week on 15th October 2018. On 2nd July 2012, a Notice of Appointment of Advocates was filed on behalf of the Respondent by Samuel Ndegwa & Co Advocates. However no Reply was filed and there was no appearance for the Respondent at the hearing. Rosemary A. Imbayi testified for the Claimants.

The Claimants' Case

3. In an amended Statement of Claim filed in court on 27th September 2017, the Claimants state that the Deceased was employed by the Respondent as a general labourer at a monthly salary of Kshs. 3,000 effective 1989. The Deceased's salary was progressively increased to Kshs. 7,165 as at the time he left the Respondent's employment.

4. The Claimants claim that the Deceased was unfairly terminated on 23rd January 2012 after demanding a salary increment. The Claimants add that the Deceased was being underpaid by Kshs. 1,558.90 per month. Additionally, he was not paid house allowance.

5. The Claimants further claim that the Deceased worked from 7.30 am to 6.00 pm, from Monday to Sunday and was not paid overtime compensation.

6. The Claimants' claim is as follows:

- a) Salary for 23 days worked in January 2012.....Kshs. 7,716.50
- b) 1 month's salary in lieu of notice.....8,723.00
- c) 21 days annual leave balance.....7,045.50
- d) Underpayment.....19,520.60
- e) Severance pay for 23 years.....100,676.00
- f) 12 months' salary in compensation.....104,676.00
- g) Overtime compensation (weekdays).....1,159,607.50
- h) Overtime compensation (Sundays).....515,381.15

i) Costs plus interest

Findings and Determination

7. In a claim arising from employment such as the current one, the first issue for the Claimant to prove is the existence of an employment relationship capable of enforcement by the Court. This becomes even more critical where the claim is undefended and there are therefore no admissions on which the Claimant can leverage.

8. In the instant case, apart from statements made in the Claimants' pleadings, no evidence was led to establish an employment relationship between the parties. The result is that the entire claim is unsupported and therefore fails.

9. In the end, the Claimant's claim is dismissed with no order for costs.

10. Orders accordingly.

DATED AND SIGNED AT MALINDI THIS 6TH DAY OF DECEMBER 2018

LINNET NDOLO

JUDGE

DELIVERED AT NAIROBI THIS 14TH DAY OF DECEMBER 2018

MAUREEN ONYANGO

JUDGE

Appearance:

Mr. Okemwa for the Claimants

No appearance for the Respondent