



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA AT KISUMU

CAUSE. NO. 173 OF 2016

(Formerly Webuye PMCC No.31 of 2012)

(Before Hon. Lady Justice Maureen Onyango)

WALTER NALIANYA.....CLAIMANT

-Versus-

MANAGER ELGON VILLA HOTEL.....RESPONDENT

JUDGMENT

The case herein was originally filed as WEBUYE PMCC NO.31 of 2012 before being transferred to this court.

In the plaint dated 6th March 2012, the claimant alleges that he was employed by the Respondent from 1st November 2010 on a 6th month contract at a salary of Shs.7,000 but on the expiry of the contract he was not paid the following -

- | | |
|-------------------------------------|----------------------|
| (a) Salary for March and April 2011 | Kshs.14,000/- |
| (b) One month leave | Kshs. 7,000/- |
| (c) Holidays six (6) days (6 x 2) | Kshs. 2,760/- |
| (d) Grand opening day | Kshs. 2,000/- |
| (e) Overtime for 30 days | <u>Kshs. 7,000/-</u> |
| | <u>Kshs.32,760/-</u> |

He prays for payment of the said sum of Shs.32,760, interest and costs.

In the statement of Defence and Defendant's statement by KIZITO JUMA WAMALWA filed on 16th March, 2012 the Respondent denies employing the claimant on a 6 months contract as alleged and avers that the Claimant was employed as a casual from 21st February to April 2011 when he left without notice. The Respondent states that the contract filed by the claimant in court is a forgery.

The case was heard on 2nd November 2016 in the absence of the Respondent after the court satisfied itself that proper service was effected on the Respondent and an affidavit of service filed.

The Claimant testified that he was employed by the Respondent for 6 months but was not paid for the last 2 months. He testified that he started working on 1st November 2010 up to 30th April 2011 as head barman at a salary of Shs.7,000 per month. He testified that he was claiming shs.32,760 being payment for 2 months salary for March and April, 2011, notice, annual leave and overtime. He testified that the tabulation of his terminal dues was done by the labour office. He also stated that he was seeking interest for 6 years during which the amount remained outstanding. He stated that judgement had previously been entered against the Respondent for failing to attend court but he applied for setting aside.

The Claimant also prayed for costs.

Determination

I have considered the pleadings, including the defence and statement by the Respondent, and the testimony of the Claimant.

The Claimant's testimony that he was employed by the Respondent is backed by a copy of the contract bearing a stamp of the Respondent. The Respondent's contention that the claimant only worked as a casual from 21st February to April 2011 is not backed by any proof. The statement and the defence were filed by KIZITO JUMA WAMALWA who states that he took over the running of the Respondent ELGON VILLA HOTEL on 8th February, 2011. He would therefore not be privy to the contract signed on 4th November, 2010.

For the foregoing reasons, I find that the Claimant was employed by the Respondent on a 6 months contract from November, 2010 to April 2011.

The Claimant testified that the Shs.32,760 he is claiming is 2 months salary arrears, leave and overtime.

Having found that there is no valid defence to the claim and that the Claimant was an employee of the Respondent, I award him the said shs.32,760 as claimed.

I further award the claimant shs.10,000 to cover reasonable reimbursements for court fees, service and reasonable travelling expenses.

Dated and signed and delivered this 23rd day of February, 2017

MAUREEN ONYANGO

JUDGE