



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 299 OF 2016

ELVIS GICHERU MWANGI

CLAIMANT

v

FOOTBALL KENYA FEDERATION

RESPONDENT

JUDGMENT

1. Elvis Gicheru Mwangi (Claimant) was employed by Football Kenya Federation (Respondent) as a Caretaker through a letter dated 10 September 2014. The monthly salary was fixed at Kshs 50,000/- per month.
2. The salary was not forthcoming after 3 months and the Claimant made a complaint to the County Labour Office in Naivasha.
3. The Labour Officer then demanded from the Respondent payment of outstanding salaries through letters dated 16 March 2015, 21 July 2015, 29 July 2015, 13 August 2015 and 8 April 2016, but got no response.
4. The lack of response prompted the Claimant to seek legal advice leading to a formal demand on 15 July 2016, and the institution of the present Cause.
5. The Respondent filed a Response on 5 September 2016 and the Cause was heard on 8 December 2016, when the Claimant testified, before adjournment to 21 February 2017 for the Respondent's case.
6. However, when the Cause was called out on 21 February 2017, Ms. Alwala for the Respondent indicated that she was closing the Respondent's case without leading evidence.
7. The Claimant filed his submissions on 10 March 2017, while the Respondent's submissions which should have been filed by 24 March 2017 were filed on 28 March 2017.
8. The remuneration agreed between the parties as outlined in the letter of appointment issued to the Claimant under the hand of the then President of the Respondent was Kshs 50,000/- per month.
9. The Claimant produced a copy of his bank statement indicating that he was paid the agreed remuneration on 31 December 2014 and 6 May 2015.
10. Apart from the remuneration paid through the bank, the Claimant testified that he was also paid through mpesa and vouchers.

Evaluation

11. The Claimant produced a copy of his letter of appointment. Despite denying that the Claimant was its employee, the Respondent did not place any evidence on record to remotely suggest the letter was not issued by a competent officer when it was issued. The letter set out the terms and conditions of service.

12. In terms of section 18(2)(c) of the Employment Act, 2007, the Claimant was entitled to payment of remuneration as set out in the appointment letter at the end of each month.

13. The testimony and evidence by the Claimant that he was paid for 3 months only and that the unpaid salaries stood at Kshs 900,000/- by time of hearing was not controverted or challenged in any substantial way, and considering the failure by the Respondent to present or lead evidence, the Court finds that the Claimant has proved his case on a balance of probabilities.

14. The assertions of fraud as pleaded by the Respondent remain no more than mere allegations.

Conclusion and Orders

15. The Court therefore finds and holds that the Respondent owes the Claimant salary arrears and orders the Respondent to pay him

(a) Unpaid salaries Kshs 900,000/-

16. Claimant to have costs.

Delivered, dated and signed in Nakuru on this 31st day of March 2017.

Radido Stephen

Judge

Appearances

For Claimant Ms. Wachira instructed by Wachira Wanjiru & Co. Advocates

For Respondent Mr. Oboso/Ms. Alwala instructed by Sila Munyao & Co. Advocates

Court Assistants Nixon/Daisy