

3. The respondent has filed defence denying the alleged employment relationship between her and the claimant. She has also denied the claim for ksh.82,681.30 and prays for the suit to be dismissed with costs.

4. The suit was heard on 13/10/16 when the claimant testified as CW1 while the defence called no witness. After the hearing, both parties filed written submissions.

ANALYSIS AND DETERMINATION

5. After careful consideration of the evidence and the submission, it is clear that the claimant was employed by the respondent as a Bar Waiter from October 1998 to 15/11/1999. There is further no dispute that after the claimant's contract was terminated by the respondent, the claimant lodged a complaint at the labour office Mombasa and the dispute was resolved in his favour vide the written agreement dated 17/5/2001. Finally there is no dispute that the claimant was paid Ksh.11000 out of the Ksh.37700 agreed as his final dues vide the said settlement agreement. The only issue for determination is whether the claimant is entitled to dues sought in the suit or any part thereof.

RELIEFS SOUGHT

6. During the hearing, the claimant withdrew his claim for salary for January to September 1999 amounting to ksh.46620. The effect of the said withdraw was that the outstanding claim was ksh.36061.30 made up of overtime, leave and severance pay. The claimant has prayed for the said sum inclusive of the ksh.26700 outstanding from the settlement agreement dated 17/5/2001. The respondent never gave any evidence to deny the same but it has been submitted from the bar that the claim was not specifically pleaded to enable the respondent to defend herself from the same.

7. The foregoing submission by the defence is however dismissed because it is not correct. Upon careful perusal of the prayers pleaded by the claimant, it is clear that he has factored the Ksh.11000 paid by the respondent on 17/5/2001. The said pleading was supported by the claimants witness statement and documentary evidence filed in court on 24/8/2016 and served on the defence before the hearing of the suit. The defence was therefore aware of the fact that the claimant was enforcing the settlement agreement signed on 17/5/2001 in addition to other claims which may not have formed part of the said agreement.

8. In view of the foregoing finding that the claimant is by this suit enforcing the said settlement agreement, I allow the claim for outstanding balance of ksh.26700 which remained after the payment of the ksh.11,000 to the claimant on 17/5/2001. This sum will attract interest at the courts rate from 7/6/2001 when it fell due under the said agreement until payment is full.

9. I however dismiss the claim for overtime and severance pay for the reason that they are not well founded. As regards the claim for severance pay, the same is dismissed because the claimant has not pleaded that he was terminated on account of redundancy. On the other hand, the claim for over time is dismissed for lack of proper particulars and evidence. In addition, the settlement agreement signed before the labour officer was voluntary and was in full settlement of the claimant's dues. The agreement stated that the Ksh.37700 was the final dues agreed between the parties herein in writing and signed for in the presence of the labour officer. The said settlement was anchored in the law and not actuated by any vitiating factors and it is therefore binding upon the parties to it.

DISPOSITION

10. Judgment is entered for the claimant in the sum of Ksh.26700 plus costs and interest as directed above.

Dated signed and delivered this 31st March 2017

O. N. Makau

Judge