



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NUMBER 646 OF 2011

EZEKIAH OKUMU OTIENO.....CLAIMANT

VERSUS

PATRIOTIC GUARDS LIMITED.....RESPONDENT

JUDGEMENT

1. By an amended memorandum of claim filed on 2nd December, 2011, the claimant averred that he was employed by the respondent in February 1999 as a guard at its Nakuru Branch at a monthly salary of Kshs 7000/=. He was later confirmed on 26th April, 2000. At the time of leaving employment the claimant was earning Kshs 20,000/= per month.
2. The claimant was subsequently promoted and transferred to Mombasa and while there incurred a number of expenses on behalf of the respondent since he was not issued with any standing imprest. The claimant therefore claimed for 26 days accrued leave, uniform deductions, refund of expenses and service pay as well as unpaid contributions to NSSF.
3. The respondent on its part denied the claimant's claims and averred that if the claimant incurred any expenses as alleged he ought to have followed the right procedure of submitting the receipts and vouchers which he did not. The respondent further pleaded that any expenditure incurred in the running of the office had to be authorized by the respondent's management and in the instant case the claimant did not apply for such authorization. The respondent however admitted owing the claimant Kshs 2000 on account of refund for uniform deductions.
4. Concerning service pay, the respondent pleaded that the claimant was not entitled to any such pay because he was a contributor to NSSF. The claimant and the respondent's witness repeated most of the averments in their pleadings at the oral hearing hence the court need not repeat them. It is not disputed that the claimant voluntarily resigned from employment which resignation was accepted by the respondent. The respondent further on its part did not contest the claimant's claim for 13 days of leave and further admitted that the claimant was entitled to a refund of Kshs 2000 on account of uniform deductions.
5. The claimant's claim for refund for expenses was refuted by the respondent on the grounds that the claimant did not seek authority before incurring them as is the procedure and further that the same were not backed up by any receipts. The court agrees with the respondent that these are akin to special damages claim and must be strictly proved. The claimant has merely tabulated the alleged expenses but failed to support any of them with payment receipts. This is not sufficient proof as required by law for special damages. The claim for refund is therefore disallowed for failure to meet the threshold of proof.

6. Concerning claim for service pay this is payable to employees who are not contributors to NSSF. There are however cases where despite contribution to NSSF, service pay is paid as an agreed term of a CBA. The claimant never pleaded he was a member of a Union and that there was in existence a CBA that allowed for payment of service pay in spite of membership to NSSF. In absence of such evidences section 35(6) (d) of the Employment Act precludes the claimant from claiming service pay on account of his membership to NSSF. This claim is therefore disallowed on that account.

7. The court will only therefore enter judgement on account of the admitted uniform refund and uncontested 13 days of leave.

8. There will be no order on costs.

9. It is so ordered.

Dated at Nairobi this 3rd day of March, 2017

Abuodha J. N.

Judge

Delivered this 3rd day of March, 2017

In the presence of:-

for the Claimant and

for the Respondent.

Abuodha J. N.

Judge