



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI
CAUSE NO.873 OF 2013

ISAAC LUMUMBA OMEGACLAIMANT

VERSUS

BERNARD BARASA T/A SPANNER MASTERS AUTO GARAGE ...RESPONDENT

JUDGEMENT

Issue in dispute- wrongful dismissal and non-payment of terminal dues/benefits

1. The claim is that the Claimant was employed by the respondent, a garage operating at Karen in Nairobi on the 28th January, 2013 as a Motor Vehicle Mechanic at a basic salary of Kshs.13, 000.00 per month and a house allowance of Kshs.1, 950.00. The contract was oral contrary to section 9 of the Employment Act. The Claimant worked until 3rd May, 2013 when the Respondent wrongfully and unfairly terminated his employment without giving reason or notice and contrary to section 41 of the Employment Act. The Respondent also refuse to pay the Claimant his terminal dues and benefits.

2. The claim is for;

- a) *Notice pay at Kshs.13, 000.00;*
- b) *Leave prorata at Kshs.3, 000.00;*
- c) *House allowance Kshs.5, 850.00;*
- d) *Overtime pay Kshs.20, 000.00;*
- e) *Medical Kshs.10, 000.00;*
- f) *12 months compensation Kshs.156, 000.00; and*
- g) *Certificate of service.*

3. In evidence to support his case, the Claimant testified that upon employment by the Respondent he was paid Kshs.13, 000.00 per month but was never issued with a written contract of employment. He signed a voucher for his salaries as no pay slip was issued. He was not paid a house allowance. His work was at Karen Shell Petrol Station. He never went on leave and was not paid for work done from 8am to 7pm daily. He undertook duties of a mechanic to overhaul engines to various Respondent customers. They were 3 mechanics with him.

4. The Claimant also testified that the Respondent had Jeep that required his attention. He was called at night to do an engine overhaul but on 3rd May, 2013 he was dismissed for no reason, without notice or hearing.

5. On cross-examination, the Claimant testified that he was working in a petrol station owned by an Indian with the duties to change engine oil and Mr Barasa was in charge of the petrol station and garage as he was an employee of the petrol station owning the Respondent company. Barasa owned the garage. There were two garages which paid the petrol station. Barasa was an employee but also a manager of the respondent. There was no letter of employment. The Claimant applied for the job but he did not keep a copy of his application and his employment was for four months.

6. Further, the Claimant testified that customers would bring their vehicles to the respondent, and barasa's brother who was the supervisor at Shell Petrol Station would allocate work. His colleagues at work, he cannot recall their names and will not testify to support the claim.

Defence

7. In defence, the respondent's case is that the Respondent is not properly described and thus not clear who the Respondent is. The employment of the Claimant is false as he is a person who specialises in making false claim, a well-known litigant against institutions and businesses with the sole purpose of blackmailing and forcing these businesses to settle out of Court to avoid unnecessary and costly litigation in undeserved matters. The Respondent has evidence of the Claimant several suit filed by the claimant. The claims made are false and should be dismissed.

8. The Respondent witness was Benson Makhani working with Mountain View Investment Limited that runs Spannerights Service Station under a local name of *Kabuaji Centre* the name of the former proprietor for Shell Petro Station. In January, 2013 the Claimant was with the Respondent but left in December, 2014. The Respondent deals with oils and a service bay, change oils, plugs and filters there is no repair of vehicles. The witness was the manager under Mr Barasa. All employees are issued with employment letters under Montainview and there is no relationship between the stated employer of the Claimant – Spanner Master Auto Garage – and the business operated under Mountainview where Barasa and the witness work and were served with summons herein. Employment of the Claimant was thus denied and the claims made are not due.

9. Both parties filed written submissions.

Determination

10. I have gone through the pleading, the evidence and the written submissions of both parties. Such shall be analysed in the determination.

11. The duty to produce work records is on the employer. Such is a mandatory requirement under section 10(6) and (7) of the Employment Act. However, an employer can only submit the employment records of an employee in the employment or previously in their employment. Where there is no employment in the first instance, no records exists for submission with the court.

12. In the Memorandum of Claim to which the Claimant has signed a Verifying Affidavit to be true, at paragraph 3 He asserts that the was paid a house allowance of Kshs.1, 950.00 but in his oral testimony in Court he stated that he was not paid a house allowance while the due salary of Kshs.13, 000.00 was paid through a voucher. The Claimant asserted that he was employed at Shell Petrol Station where Barasa was an employee but at the same time the owner of the respondent. Who then was the employer? What is the link between the place of work and the employer? This was for the Claimant to clarify which I find was not done for the Court to be able to assign liability and in any event, his testimony that he was employed by Barasa and work was allocated by Barasa's brother whose name he cannot recall does not give credence to the claim. In such doubts, the Claimant should have enjoined the Shell Petrol Station said to be owned by an Indian noting the circumstances of his employment. Further the claim is that the Claimant

had duties to overhaul engines but he changed this to state that his duties were to change oil.

13. These are fundamental contradictions which go into the integrity of the claim.

14. The defence that the claim is false, that there was no employment by any entity known as *Spanner Masters Auto Garage* should be further interrogated. I have done a search of the Claimant and made the following findings;

15. On 9th July, 2012 the Claimant filed Cause No. Isaac Lumumba Omega v Babu & Sons C.S. Bharij [2013] a business in Karen area and in defence employment was denied and that the demand letters made from Kituo Cha Sheria were a forgery a matter that was reported to Langata Police Station. The Court on its analysis of the suit observed;

The Claimant on termination started harassing Mr. Bharij on weird calls and short text messages in the wee hours of the night and this was reported to Hardy Police Station. He further testified that the Claimant is a known trouble maker as is reported by other of his employers and also has a multiplicity of suits against his other 'employers' in this Court as follows;

1. Industrial Cause No. 873 of 2012

2. Industrial Cause No. 579 of 2010

3. Industrial Cause No. 1029 of 2012

4. Industrial Cause No. 552 of 2011

5. Industrial Cause No. 1278 of 2010

6. Industrial Cause No. 728 of 2007

7. Industrial Cause No. 1437 of 2010

The above suit was dismissed with costs.

Other suits in the Court system are;

Cause No.552 of 2011 Isaac Lumumba Omega versus Market Car Hire;

Cause No.1437 of 2010 Isaac Lumumba Omega versus Mohamed Kalimali;

Cause No.1275 of 10 Isaac Lumumba Omega versus Bipin Shan;

Just to point out a few. Going by the long list noted in **Isaac Lumumba Omega v Babu & Sons C.S. Bharij [2013] eKLR** I take it that the Claimant has over the last 10 years since 2007 specialised in a very dangerous practice. Filing suit against business situated on or around Karen areas in Nairobi. The Claimant cannot have filed over seven (7) suits for wrongful dismissal of employment in each and every business he comes across. With the contradictions apparent in this case, on the evidence of the Respondent witness that they are not *Spanner Master Auto Garage* and have never operated under such a business name, the claim is dealt. The wrong party is sued but more fundamentally, there claim in itself has no basis and on its merits it is lost.

Both advocates herein for the parties – **Nyabena Nyakundi & Co. Advocates for the Claimant and Nyaencha WAichari & Co. Advocates** comprising advocates of the High Court of Kenya, save for the client/advocate responsibilities, as officers of this Court have a higher duty and calling to ensure the integrity and dignity of the Court to uphold the rule of law and to avoid the abuse of the Court process. Such duties extends to advising clients appropriately. Even where the claim herein has failed on its merits,

for the Claimant to proceed and engage the Court with over 7 claims, seek to go before a different Judge every time he files a new claim is an affront to justice. Such should not be condoned. I hope the Court will not see another of such frivolous claim. As the Court in **Cause No. Isaac Lumumba Omega v Babu & Sons C.S. Bharij [2013]** concluded, I also wish to associate myself with similar sentiments;

This [suit] is an outright abuse of the process of court. I wish the Court had a way of sieving this kind of claims before they clog the Court system and therefore release its energies of Court to try worthy causes.

In conclusion therefore, the claim is hereby dismissed with costs to Mr Bernard Barasa.

Dated and delivered in open Court at Nairobi this 6th day of April, 2017

M. MBARU

JUDGE

In the presence of:

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