



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 780 OF 2016

RICHARD LITUNGA LIKOYE.....CLAIMANT

VERSUS

PRIME STEEL MILLS LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. The Claimant, Richard Litunga Likoye filed this claim on 6th May 2016. The Respondent was duly served but did not file any reply. The matter therefore proceeded as an undefended claim with the Claimant testifying on his own behalf. He also filed written submissions.

The Claimant’s Case

2. The Claimant states that he was employed by the Respondent as a plate mason in May 2012. He worked continuously for three and a half years initially earning a daily rate of Kshs 474 which was later increased to Kshs 492. He avers that he worked from 7.00 am to 7.00 pm, seven days a week, inclusive of public holidays.

3. On 2nd October 2015, the Claimant’s employment was terminated. He states that the termination was unlawful and unfair. He now claims the following:

- a) Severance pay.....Kshs. 22,140
- b) Pay in lieu of notice.....14,760
- c) Overtime for 8,064 hours.....495,936
- d) Leave pay.....44,280
- e) 12 months’ salary in compensation.....177,120
- f) Certificate of service
- g) Costs plus interest

Findings and Determination

4.This being an undefended claim, the first issue that the Court must determine is whether there was an employment relationship between the Claimant and the Respondent, capable of enforcement by the Court.

5.In support of his case the Claimant produced a statement of account from the National Social Security Fund (NSSF). This statement however shows that the Claimant worked for the Respondent for a period of only two months running from 1st May 2015 to 30th June 2015.

6. Thereafter, the Claimant was employed by Jokali Handling Services whom the Claimant described as the Respondent's subcontractor. There was no evidence to support the Claimant's averment that he was employed by the

Respondent from May 2012 nor did the Claimant explain his movement from the Respondent's employment to Jokali Handling Services.

7. It would also appear that by October 2015 when the Claimant alleges to have been terminated by the Respondent, he was no longer in the Respondent's employment having moved to Jokali Handling Services from 1st July 2015.

8. In light of the foregoing, the Court finds that the Claimant failed to establish an employment relationship between himself and the Respondent. The consequence is that his entire claim is without basis and is dismissed with no order for costs.

9. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI

THIS 30TH DAY OF JUNE 2017

LINNET NDOLO

JUDGE

Appearance:

Mr. Maina for the Claimant

No appearance for the Respondent