



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 798 OF 2015

BETWEEN

ALPHANI ISMAEL MBORIO CLAIMANT

VERSUS

1. CHANIA TRANSPORT COMPANY LIMITED

2. KARIUKI JOSEPH KAMAURESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Munee Katu & Company Advocates for the Claimant

E.N. Waithira & Company Advocates for the Respondent

JUDGMENT

1. The Claimant filed his Statement of Claim, on 26th October 2015. He states he was engaged by the Respondents to set up an Office at Voi, so that the Respondents could have more passengers in their Public Service Vehicles, which plied Mombasa- Nairobi route. He worked as a General Clerk. Through the efforts of the Claimant, the Voi Office opened on 1st May 2007. The business did very well. In 2011 the Claimant requested the Respondents to adjust his wages, to conform to the minimum wage levels. The Respondents did not do so. The Claimant issued the Respondent with a notice of resignation on 6th October 2014. He prays for Judgment against the Respondent for:-

a) Underpayment of salary for the period 1st May 2011 to 30th September 2014 at a total of Kshs. 178,913.

b) 63 days of annual leave at Kshs. 63,666.

Total.....Kshs. 242,579.

c) Certificate of Service to issue.

d) Costs and Interest.

2. The Respondents filed their Statement of Response on 18th November 2015. They deny ever having employed the Claimant. He did not resign as he was never employed by the Respondents. They pray the Court to dismiss the Claim with costs to them.

3. The Claimant gave evidence, and closed his case on 26th September 2016. The Respondents' case was scheduled for hearing on 6th December 2016 and 13th March 2017. The Respondents did attend Court on either date. They did not give evidence. Proceedings closed on the latter date. The dispute was last mentioned on 21st March 2017 when Parties confirmed the filing of their Closing Submissions and Judgment scheduled for delivery.

4. The Claimant testified he was employed by the Respondents as a General Clerk at Voi, earning a salary of Kshs. 9,000 a month. He operated from the roadside at the beginning. He procured office premises and in consultation with the Respondents, paid for rent. He continued working, and his salary was raised to Kshs. 12,000 per month. He was not paid in accordance with the Wage Orders. He was not paid house allowance. He resigned on 6th October 2014. The Claimant relies on documents attached to his Statement of Claim.

5. Cross-examined, he testified he was employed by the 2nd Respondent, who owns the 1st Respondent. He was not a Tout. His salary was paid in cash, or through m-pesa. He resigned because of poor pay. The Respondents operate a fleet of public service vehicles.

The Court Finds:-

6. The Respondents did not give evidence to refute the position of the Claimant. The Statement of Response is a general denial. The Respondents filed Submissions in which they discuss unfair termination. There is no claim made concerning the subject of unfair termination. They also submit that the Claimant's contract was not terminated; he resigned. Elsewhere, their position is that the Claimant was never an Employee of the Respondents. In the same Submissions, the Respondents allude to the presence of an illegal contract, which they urge the Court not to enforce. The Court is also told that the Claimant never raised the issue of underpayment with the Respondents. They fault the Claimant for not having a letter of appointment, while the Claimant's position is that he was given an oral contract.

7. The position of the Respondents is confusing, inconsistent, contradictory, wasteful, and unfounded on law and fact. Why discuss irrelevancies such as unfair termination and illegal contracts, while no Party has alleged there was unfair termination, and while there is no pleading on illegal contracts? There was a general lack of seriousness in responding to the Claim. The Respondents failed to give evidence, and then filed Closing Submissions which are at variance with their Statement of Response, and which are of no help at all, to the Parties, and to the Court.

8. The Court agrees with the evidence of the Claimant that he was employed by the Respondents as a General Clerk. He resigned after the Respondents declined to adjust his salary to match the minimum wage levels. The Respondents did not grant him annual leave, or pay in lieu of leave. He has persuaded the Court through the provisions of the Labour Institutions Act Number 12 of 2007, and Legal Notices Number 64 of 2011, 71 of 2012, and 197 of 2013, that he was underpaid. ***The Claim for underpayment of salary and for annual leave pay, are granted at a total of Kshs. 242,579.***

9. ***Certificate of Service to issue.***

10. ***Costs to the Claimant.***

11. ***Interest granted at 14% per annum from the date of Judgment till payment in full.***

IN SUM, IT IS ORDERED:-

a) The Respondent shall pay to the Claimant underpayment of salary as detailed in the

Statement of Claim, and annual leave pay, added up at Kshs. 242,579.

b) Certificate of Service to issue.

c) Costs to the Claimant.

d) Interest granted at 14% per annum from the date of Judgment till payment is made in full.

Dated and delivered at Mombasa this 23rd day of June 2017

James Rika

Judge