



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NUMBER 704 OF 2014**

**JOSEPH SANI ORINA.....CLAIMANT**

**VERSUS**

**HIPRORA BUSINESS SOLUTION (E.A) LIMITED.....RESPONDENT**

**JUDGMENT**

1. The claimant pleaded that he was between 23<sup>rd</sup> June, 2009 and 16<sup>th</sup> June 2013 employed by the respondent first as a Double Checker and then a Reliever. He was later on promoted to Systems controller and at the time of termination working as Junior Regional Manager. At the time of termination of his contract he was earning a gross salary of Kshs 60,000/=.
2. In april 2012 while in Mombasa he was asked to send his original certificates and transcripts for purposes of registering a professional training college. The claimant obliged and sent the certificate as requested. According to him, it was agreed that the respondent would upon registration return the certificates to the claimant. However the respondent did not return the certificates and transcripts as agreed but informed the claimant that were either misplaced or lost.
3. The claimant further averred that it was mutually agreed that the claimant would swear an affidavit over the loss of the documents and proceed to Uganda where he studied to get replacements. The respondent agreed to meet and or refund the travelling expenses. The claimant however complained that despite forwarding his claim for travelling expenses the respondent never refunded them.
4. The claimant further averred that as a result of loss or misplacement of this certificates by the respondent, he kept applying for jobs but was unable to get any. He therefore sought compensation for the ten months he was out of employment.
5. In his oral testimony in court the claimant repeated the averments in the memorandum of claim and added that he was given a letter to sign which indicated he had been given his certificates but refused to do so since that was not true. He further stated that he was claiming house allowance because the same was never paid. His payslips never showed house allowance was paid. He further claimed he used to work during public holidays but was never paid extra.
6. Concerning his relocation, it was his evidence that he was paid for relocation to Mombasa but never back to Nairobi. According to him, he spent kshs 69,000 to relocate to Nairobi for which he was seeking refund. Concerning leave, the claimant stated he never went on leave for three years but commuted two years hence was claiming one year.

7. In cross-examination he stated that his lawyer was asked if he had authority to receive the documents on his behalf. The lawyer further informed him that the respondent was willing to refund his travelling expenses to Uganda. He denied knowledge of offer to pay him his leave days.

8. The respondent's witness Ms Lucy Njiru informed the court that she was the respondents Human Resource manger. She informed the court that the respondent never refused to release the claimant's documents and that the claimant has never collected his dues. According to her the respondent was ready to pay the claimant his dues. She further stated that the letter informing the claimant about his dues did not have any conditions. She stated that the claimant asked that his documents be forwarded to his lawyer.

9. They wrote to the claimant's lawyer to confirm the same but the letter was never responded to. She further stated that the claimant was entitled to 2013 leave and that relocation allowance was standard and was Kshs 10,000/=.

10. In cross-examination he stated that the claimant was receiving consolidated pay hence was not entitled to house allowance. She admitted that the claimant's certificates were misplaced but were later found and forwarded to his advocates. According to her, the claimant was called to collect his documents but refused to do so. She further stated that the claimant was informed of what the respondent was willing to pay and further that the claimant did not renew his contract.

11. In re-examination, she stated that the respondent offered to help the claimant replace his certificates by paying his travelling costs to Uganda.

12. The court having summarized the evidence as above, there seems to be little if any dispute over the claimants claim. From the evidence, the respondent had no problem paying the claimant his terminal dues, leave, relocation expenses and travelling expenses to Uganda. The respondent disputed the quantum of relocation expenses and entitlement to house allowance.

13. In his memorandum of claim, the claimant sought to be paid by the respondent unpaid house allowance for 2 years, unpaid relocation allowance, unpaid service for four years, unpaid worked holidays for 44 days, unpaid cost of travel and accommodation and food to Uganda, compensation for 10 months without employment or compensation for 12 months for unlawful termination.

14. Concerning claim for house allowance, the respondent stated that the claimant was paid a consolidated salary hence not entitled to claim house allowance. The claimant's payslip showed that his gross salary was Kshs 60,000/=. Gross salary as opposed to basic salary usually includes house allowance and other allowances paid by an employer and include basic pay. It is therefore correct that the claimant was paid a consolidated salary hence was never entitled to house allowance. Regarding claim for unpaid service the court does not find any basis for this claim in any event the claimant was a contributor to NSSF. The claim for 44 unpaid worked holidays is also impractical because the claimant was on fix term contract for 12 months renewable and could not have possibly worked through that number of holidays. The claim is also found with basis and is hereby rejected.

15. Concerning claim for 10 months the claimant alleges he was unemployed because he did not have his certificates, the claimant did not produce any job offers or invitation for interviews which could not be granted because of the missing certificates. Besides, the claimant could have easily applied for copies or obtained a police abstract evidencing such loss.

16. In conclusion the court will enter judgement in favour of the claimant as follows:

	Kshs
a) One month's pay in lieu of leave	60,000
b) Relocation allowance (as per letter of promotion)	10,000

c) Travelling expenses to Uganda

98,000

**168,000**

d) Costs of the suit.

17. It is so ordered.

Dated at Nairobi this 14<sup>th</sup> day of July 2017

**Abuodha J. N.**

**Judge**

Delivered this 14<sup>th</sup> day of July 2017

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha J. N.**

**Judge**