



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA
CAUSE NUMBER 308 OF 2015

BETWEEN
CHARLES OKETCH OURE.....CLAIMANT
VERSUS
A.A. HAULIERS.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Munee Katu & Company Advocates for the Claimant

Akanga Alera & Associates Advocates for the Respondent

JUDGMENT

1. The Claimant filed his Statement of Claim on 8th May 2015. He states he was employed by the Respondent as a Heavy Commercial Driver between 1st October 2015 and 30th March 2015. His first salary was Kshs. 10,000, and the last Kshs. 13,000 per month.

2. He complained to the Respondent to bring up his salary to the level contained in the General Order. The Respondent did not do so. He resigned on 30th March 2015. He claims from the Respondent:-

a) Salary for March 2015 at Kshs. 25,381.

b) Underpayment of salary for the period 1st May 2012 to 30th April 2013 under Legal Notice No. 71 of 2012, at Kshs. 111,175.

c) Underpayment of salary for the period 1st May 2013 to 28th February 2015 under Legal Notice 197 of 2013, at Kshs. 272,395.

d) Annual leave pay of 63 days at Kshs. 93,277

TotalKshs. 476,847

e) Certificate of Service to issue.

f) Costs and interest.

3. The Respondent filed its Statement of Response, on 26th May 2015. Its position is that the Claimant was its Driver as stated in the Claim. His salary as given is not disputed. He drove Respondent's motor vehicle recklessly, and was involved in a self caused accident, occasioning damage to Respondent's car. The total damage came to Kshs. 2,790,500, which the Respondent states, would counterclaimed at the opportune moment. The Respondent argues that Claimant's action warranted summary dismissal, and resignation was meant to avoid summary dismissal. He was paid salary commensurate with the rate applicable to his role under the law. The Respondent prays for dismissal of the Claim with costs to the Respondent.

3. The Claim was set down for hearing by both Advocates. The date was taken on 29th September 2016. Hearing was fixed for 23rd March 2017. The Respondent and its Advocates however, did not attend Court during the hearing. The Claimant proceeded *ex parte*. The Claimant reiterated the contents of his Pleadings.

4. Parties, including the Respondent, confirmed filing of their Closing Submissions at the last mention on 11th July 2017.

5. The Claimant, relying on Section 17 of the Employment Act; and Sections 47[1] [a], 48[2] and 48 [3] of the Labour Institutions Act 2007, submits the Claimant was entitled to be paid his rightful salary, and was underpaid. He was entitled to annual leave under Section 28 of the Employment Act. Certificate of Service is granted under Section 51 of the Employment Act 2007.

6. The Respondent submits that the Claimant absconded and his acts of gross misconduct resulted in loss of Kshs. 2,790,500 to the Respondent.

The Court Finds:-

7. The Respondent did not avail evidence contradicting the Legal Notices exhibited by the Claimant. The rates of monthly salary, applicable to Heavy Commercial Drivers, are shown in the Legal Notices. The rate paid by the Respondent at Kshs. 13,000 per month, did not match the minimum levels applicable, over the specified periods.

8. There was no counterclaim for the sum of Kshs. 2,790, 000 by the Respondent against the Claimant, as was intimated in the Statement of Response. The Court does not find any relevance of this intended claim, to the issues in dispute. It does not relate to underpayments at all, or the prayers for annual leave pay, and other prayers. The Respondent did not initiate any disciplinary proceedings arising from the accident allegedly occasioned by Claimant's negligence. The incident was only raised by the Respondent in reply to Claimant's demand letter.

9. The Claimant has established his Claim. The Respondent had the opportunity to challenge Claimant's evidence, but stayed out of Court during the hearing.

IT IS ORDERED:-

a) Judgment is entered for the Claimant in the total sum of Kshs. 476,847 as detailed in the Statement of Claim.

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 October 2017.

James Rika

Judge