



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI

CAUSE NUMBER 1493 OF 2013

DANIEL KIOKO PIUS.....CLAIMANT

VERSUS

ATHI RIVER STEEL PLANT LIMITED.....RESPONDENT

JUDGEMENT

1. By a memorandum of claim filed on 16th September, 2013 the claimant averred that he was employed by the respondent on 1st March, 2004 as a cook at a monthly salary of Kshs 4,500/= per month which was progressively increased and by the time of leaving employment, the claimant was earning Kshs 8,222 and a house allowance of Kshs 3,100 per month.
2. The claimant complained that during his employment he was never provided with weekly rest days. He further claimed that he was never paid for working during public holidays and further that he was granted annual leave for 21 days instead of 26 days as per the CBA. The claimant further pleaded that he was not paid for leave travelling allowance and further that gratuity was paid for 95 instead of 198 days. The claimant therefore claimed as sum of Kshs 739,939.10 as his terminal dues.
3. The respondent on its part contended that the claimant was provided with weekly rest days and public holidays and was paid overtime for any holiday that he may have worked. The respondent further averred that the CBA commenced in 2008 yet the claimant joined the Union in 2013. The respondent further refuted the claim for leave travelling allowance since the claimant was paid in lieu of leave. The respondent further denied claim for house allowance and averred the claimant was paid 15% or more in addition to basic salary as house allowance.
4. Concerning claim 864 weekly rest days, the respondent averred that during the year 2004 -2008 the claimant was paid rest days in form of fixed overtime allowance and from 2008 he would have 1 rest day every week. The respondent further averred that the claimant did not identify the particular holiday he was not paid for. The claim for leave was also denied as the claimant was paid in lieu of leave. The respondent further averred that the claim for gratuity was unfounded since the same was paid in accordance with the CBA.
5. In his testimony in court the claimant testified that he left employment on 30th June, 2013 having worked for 9 years 4 months. It was his evidence that they used to sign in and out of work. Concerning working hours, it was his evidence that he used to work 8 hours a day but could work 16 hours when relieving a colleague on off duty. In cross-examination he stated that he joined the Union in 2007 but did not have his membership card in court. He further claimed he never got any rest days and that he never

went on off. When shown his payslip he stated that he could not recognize it.

6. The claimant further admitted receiving gratuity for four years and further that he used to be paid in lieu of leave. When shown the payment form he admitted he signed for his terminal dues stating he had no further claim but he went to his union because he felt he was not paid his lawful dues.

7. The respondent's witness Mr Christopher Wangui stated that he was the Human Resource Officer of the respondent. It was his evidence that employees were entitled to 21 days of leave and that an employee could be paid in lieu of leave. He further stated that the CBA commenced in 2008 and that the claimant joined the union in 2013. Regarding work attendance he stated that the respondent had an attendance register where the work attendance and hours worked was recorded. Concerning house allowance he stated that the respondent paid 15% of the basic pay.

8. There seems to be no dispute over the termination of the claimant's services. The only dispute is over the amounts the claimant received as his terminal benefits. According to the claimant he felt he did receive his lawful due though he signed for them as full and final settlement.

9. In termination of employment cases the burden of proof of reason for termination and fairness of the process rests with the employer however the Act is not clear on who the burden of proof lies in cases where an employee disputes the quantum of terminal benefits paid or payable. This should therefore be guided by the ordinary rule in civil claims that the evidently burden lies on the person who alleges. In this particular case, the claimant carries that burden.

10. The claimant averred among other things he was never given rest days for the period he worked, he further claimed that he worked during public holidays and was never paid. It was also his complaint that he was granted 21 days of leave instead of 26 as provided by the CBA. The claimant further claimed travelling allowance as well as gratuity for 103 days which contended was a balance of the 198 days he was entitled to but only paid for 95 days. In support of these claims the claimant attached copies of the Employment Act, the CBA for the period January, 2012 to December 2013 and a demand letter from A. O. Jacob Labour Consultants.

11. The respondent in refuting the claimant's claim attached work attendance register showing times when the claimant worked and when he did not. The respondent further attached the claimants several payslips showing payment for overtime and house allowance. The respondent further attachment an acknowledgement form signed by the claimant stating that he had received Kshs 29,887.04 in full and final settlement of his terminal dues and confirming he had no further claims whatsoever against the respondent

12. The claimant did not dispute or file any document to counter these documents filed by the respondent. The claimant's claim therefore remained broadly supported by the Employment Act and the attached CBA without pointing out specifically which aspects supported his claim as filed in court. The claim therefore failed to meet the requisite evidential threshold to support the judgement in favour of the claimant. The evidence offered by the respondent adequately countered the claimant's claim making the same incapable of meriting a judgement in his favour. The claim is therefore found without merit and is hereby dismissed with costs.

13. It is so ordered.

Dated at Nairobi this 1st day of December, 2017

Abuodha J. N

JUDGE

Delivered this 1st day of December, 2017

Abuodha J. N

JUDGE