



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

**AT NAIROBI**

**CAUSE NUMBER 1311 OF 2013**

**OBADIA ANDERE ABISAI.....CLAIMANT**

**VERSUS**

**JASWANT SINGH & BROTHERS.....RESPONDENT**

**JUDGMENT**

1. The claimant in this memorandum of claim filed on 16<sup>th</sup> August, 2013 averred that he was employed by the respondent as a mason working on respondent's various sites at a daily wage of Kshs.500 paid weekly. In his averments contained in paragraph nos 4 and 5 of the memorandum of claim, the claimant avers his wages were below statutory minimum wage and further that the respondent did not pay him a monthly house allowance of Kshs.1,300/= per month.
2. The claimant further averred that he was never paid tools allowance of Kshs.125 per month for the 44 months he worked for the respondent.
3. The claimant therefore sought an order of the Court for the payment of Kshs.279,300.79 on account of leave, rest days, public holidays, tools allowance, house allowance and underpayments. The claimant did not aver whether he is still in the respondent's employment or not.
4. The respondent never filed any appearance or defence to the claim. At the hearing the claimants counsel opted for the disposal of the matter by way of written submissions. In his written submissions Counsel stated that the claimant was employed by the respondent as a Mason in various sites where the respondent was building houses at a daily wage of 500/= paid weekly. According to counsel his client worked until 11<sup>th</sup> January, 2013 when he left for work voluntarily due to harsh conditions of work.
5. In claims of this nature, the onus is usually on the employee to prove his claim against the employer. It is not enough to merely allege. Whereas the claimant alleges he was underpaid no evidence has been laid before Court to show how much was paid to enable the Court ascertain the amount of underpayment. The pleadings as drafted are convoluted and unhelpful to the Court in understanding as well as ascertaining the veracity of the claimants claim.
6. Whereas the claimant avers that the respondent has refused to settled his demands he has annexed a letter dated 10<sup>th</sup> May, 2013 (appendix OAA3) addressed to him by the respondent asking him to see Mr. Mutua or Koech (site supervisor and clerk) to ascertain any claim he may

have had. The claimant neither in his pleadings nor submissions made any reference to this letter.

7. The foregoing coupled with the manner in which this claim is presented before the Court makes it unsafe to make any finding in favour of the claimant. This Court has the responsibility to do justice and simply because a matter has proceeded ex parte does not mean it will accede to any claim placed before it even if there is no sufficient evidence in support.

8. The Court therefore directs that the claimant files his claim before the local labour office who shall inquire into the matter in light of the respondent letter dated 10<sup>th</sup> May, 2013 and report to the Court within 90 days. The District/County Labour Office Nairobi is by a copy of this judgment which shall be served with the assistance of the Deputy Registrar of the Court, is directed to inquire into the claim and file or report as directed.

9. It is so ordered.

Dated at Nairobi this 26<sup>th</sup> day of February 2016

Abuodha J. N.

Judge

Delivered this 18<sup>th</sup> day of March 2016

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge