



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO 240 OF 2014

ROBERT OCHORA.....CLAIMANT

VS

ABDULLAHI KASSIM T/A

TOTAL MADARAKA NEXT INVESTMENTS.....RESPONDENT

AWARD

Introduction

1. By a Memorandum of Claim dated 27th January 2014 and filed in Court on even date the Claimant has sued the Respondent for unlawful termination and failure to pay final dues. The Respondent did not file any reply and the Court therefore heard the Claimant *ex parte* on 2nd December 2015.

The Claimant's Case

2. The Claimant states that he was employed by the Respondent as a Technician at a basic monthly salary of Kshs.13,500.00 effective 7th July 2011. He was not issued with a letter of appointment. The Claimant further states that on 2nd December 2013, the Respondent terminated his employment without valid reason.

3. The Claimant's claim is as follows:

- a. A declaration that the termination of his employment was unlawful
- b. One month's salary in lieu of notice.....Kshs.13,500.00
- c. House allowance @ 15% of basic salary.....34,425.00
- d. Leave pay for 1 year.....13,500.00
- e. Off duty
- f. Overtime
- g. Service gratuity.....6,750.00
- h. 12 months' salary as damages for unlawful termination.....186,300.00
- i. Certificate of service
- j. Costs plus interest

Findings and Determination

4. The following are the issues for determination before the Court:

- a. Whether there was an employment relationship between the Claimant and the Respondent capable

- of enforcement by the Court;
- b. Whether the Claimant has made out a case for unlawful termination;
 - c. Whether the Claimant is entitled to the remedies sought.

Employment Relationship?

5. The first issue for determination in this case is whether there was an employment relationship between the Claimant and the Respondent capable of enforcement by the Court. The case proceeded as an undefended claim and there was therefore no admission by the Respondent on this account. The question then is whether the Claimant has, on a balance of probability, established an employment relationship between himself and the Respondent.

6. The Claimant testified that he was a member of the National Social Security Fund (NSSF) and in the final submissions filed on his behalf, a copy of a provisional statement of account for period between 1st April 2011 and 31st July 2013 was attached. This statement does not however reflect the Respondent as the Claimant's employer and the effective date of employment on the statement differs from the date given by the Claimant in his testimony.

7. The Court is aware that it is the responsibility of the employer to document the employment relationship. However, even in cases where the employer fails to do so, the employee still bears the burden of establishing the existence of an employment relationship either through documentary evidence or corroborative *viva voce* evidence.

8. In my view, the Claimant's word alone is not enough to prove the existence of an employment relationship. In the instant case, the Claimant did not provide any evidence to corroborate his testimony and the Court finds that he failed to establish the existence of an employment relationship between himself and the Respondent. The result is that the claim has no basis and is dismissed with no order for costs.

9. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS

26TH DAY OF FEBRUARY 2016

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JUDGE

Appearance:

Mr. Nyabena for the Claimant

No appearance for the Respondent