



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 33 OF 2015

FRANCIS ASEYO BULUKU.....CLAIMANT

VS

PROTECTORS LIMITED.....RESPONDENT

AWARD

Introduction

1. The Claimant's claim brought by Statement of Claim dated 14th January 2014 and filed in Court on even date seeks compensation for unlawful dismissal and payment of accrued dues. The Respondent filed a Reply on 20th November 2015. The Claimant gave sworn evidence but the Respondent chose not call any witnesses.

The Claimant's Case

2. The Claimant states that he was employed as a house boy by the Respondent's Director Manjit Singh effective June 1994. He worked as such until 1st August 2014 when he was dismissed. At the time of dismissal, the Claimant earned a monthly salary of Kshs. 9,880.

3. The Claimant claims that he was underpaid and that the Respondent did not make regular National Social Security Fund (NSSF) remittances on his account. He claims the following:

- a. A declaration that his dismissal was unlawful
- b. Underpayment for 3 years
- c. 12 months' salary in compensation.....Kshs. 134,988
- d. 1 month's salary in lieu of notice.....11,249
- e. Salary for August 2014 (leave).....11,249
- f. Service pay for 14 years (11,249/30x15x14).....78,734
- g. Costs plus interest

The Respondent's Case

4. In its Reply to Claim filed on 20th November 2015, the Respondent states that it is wrongly joined in these proceedings. The Respondent adds that the Claimant has perjured himself in his verifying affidavit and as such the claim cannot lie.

5. The Respondent further states that the Claimant resigned on his own volition by letter dated 1st August 2014. He then requested to proceed on terminal leave and did not return. He is therefore deemed to have forfeited his notice pay.

Findings and Determination

6. The following are the issues for determination by the Court:
 - a) Whether the Respondent is properly joined in these proceedings;
 - b. Whether the Claimant resigned or was unlawfully terminated;
 - a. Whether the Claimant is entitled to the remedies sought

The Respondent's Joinder

7. In its Reply to Claim, the Respondent states that it is wrongly joined in these proceedings. On his part, the Claimant states that he was employed by the Respondent's Director, Manjit Singh. The Court was therefore unable to understand why the Claimant chose to sue a party with whom he had no employment relationship.

8. One of the beacons of the special jurisdiction exercised by this Court is the existence of an employment relationship capable of enforcement. From the evidence on record, there was no employment relationship between the Claimant and the Respondent and an employment claim does therefore lie. For this reason the Claimant's entire claim fails and is dismissed.

9. Each party will bear their own costs.

10. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 27TH DAY OF MAY 2016

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JUDGE

Appearance:

Mr. Makori for the Claimant

Mr. Milwa for the Respondent