



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 1840 OF 2015

NICHOLUS KIPKEMOI KORIR.....CLAIMANT

VERSUS

HATARI SECURITY GUARDS LIMITED.....RESPONDENT

JUDGMENT

1. The claim proceeded ex parte after the Court became convinced that the respondent was served and entered appearance but failed to file a response to the claim.
2. In his evidence before Court, the claimant stated that he was employed by the respondent as a guard on 5th July, 2010. He was not issued with a letter of appointment. His salary per month was Kshs.7,600/=. According to him, he was forced to resign after he continued reporting to the office but was never allocated duties. It was his evidence that in 2011 at Muthaiga he was attacked and seriously injured by thugs while on duty. He was taken to hospital and admitted for six days.
3. The doctor thereafter gave him three months off but he only stayed for one month. He decided to go back to work because the respondent was not paying him regularly when he was on sick off. He further stated that he was paid some Kshs.19,949/= upon resignation which he had no idea what it was for. The claimant did not exhibit a copy of his resignation letter either in his pleadings or in Court during the hearing.
4. The settled rule in all civil claims is that a party who intends a Court to find or decide any matter in his or her favour must prove the allegations to the required standard of proof in civil claims which is on a balance of probability. Further under section 47(5) of the Employment Act in any complaint of unfair termination or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for termination or wrongful dismissal shall rest on the employer.
5. This burden of proof does not become any less on the employee simply because the employer has not defended the claim or absent at the trial. The claimant must still prove his or her case. It is therefore not enough for the employee to simply make allegations on oath or in the pleadings, which are not backed by any evidence and expect the Court to find in his or her favour.
6. The claimant herein alleges he was employed by the respondent but has produced nothing to establish that there indeed existed employer-employee relationship between him and the

respondent. It may well be that he was never issued with a letter of appointment but some form evidence such as payslip or staff card could have sufficed. He alleges that he resigned from the respondent and was paid Kshs.19,949/= which he had no idea what it was for but neither produces the resignation letter nor payslip to show he was paid any such money by the respondent.

In the circumstances, the Court finds that the claimant has failed to prove his claim to the required standards and dismisses the same with costs.

7. It is so ordered.

Dated at Nairobi this 17th day of June 2016

Abuodha Jorum Nelson

Judge

Delivered this 17th day of June 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha Jorum Nelson

Judge