



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

CAUSE NO 1707 OF 2012

JOSEPH NDIRITU.....CLAIMANT

VS

JOHN WANYEKI.....RESPONDENT

AWARD

Introduction

1. This case was heard during service week, a time set aside by the Court for disposal of old cases. The parties were served by the Court. While the Claimant attended Court, the Respondent, who had not filed a response did not appear. I therefore heard the Claimant *ex parte*.

The Claimant's Case

2. The Claimant states that he was employed by the Respondent by oral contract effective January 2012 in the position of Driver at an agreed daily rate of Kshs. 800. However, the Respondent did not honour his obligation and the Claimant worked without pay until 24th May 2012 when his employment was terminated after the motor vehicle he was driving was sold.

3. The Claimant claims compensation for wrongful dismissal plus the sum of Kshs. 96,000 being accrued wages for the period worked. In support of his case, the Claimant called his former colleague, Evans Kiptoei Andu as a witness.

4. Andu corroborated the Claimant's testimony that the Claimant worked for the Respondent from January to May 2012. He told the Court that he and the Claimant worked as drivers on Route 14, Kariobangi-Town. He identified the motor vehicle which was assigned to the Claimant as motor vehicle registration number KAS 830M.

Findings and Determination

5. This is an undefended claim and the first question the Court must ask itself is whether the Claimant has established an employment relationship between himself and the Respondent capable of enforcement by the Court.

6. The law is clear that it is the responsibility of the employer to document the employment relationship. It follows therefore that the absence of a written employment contract by itself does not defeat an employee's claim. Where there is no written contract of employment, it is left to the Court to interpret the terms of engagement.

7. The Court takes notice that the Claimant worked in the public transport sector which is not well regulated. The Court therefore finds the Claimant's testimony, which was corroborated by his former colleague, that he was not paid his agreed wages plausible. In the absence of any response from the Respondent, I award to the Claimant the claimed sum of Kshs. 96,000 being accrued wages. The claim for wrongful termination was however not proved and is dismissed.

8. Finally I make an award in favour of the Claimant in the sum of Kshs. 96,000. The award amount will attract interest at court rates from the date of the award until payment in full.

9. I make no order for costs.

10. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 22ND DAY OF JULY 2016

LINNET NDOLO

JUDGE

Appearance:

Joseph Ndiritu (the Claimant in person)

No appearance for the Respondent