



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 1523 OF 2014**

**(Before Hon. Justice Hellen S. Wasilwa on 24<sup>th</sup> February, 2015)**

**JAMES ONTORI ORWOCHI.....CLAIMANT**

**VERSUS**

**HIPORA BUSINESS SOLUTION (EA) LIMITED .....RESPONDENT**

**JUDGMENT OF THE COURT**

1. On the 2/9/2014, the Claimant herein filed his Memorandum of Claim in person. The Respondents were duly served and on 6/11/2014, they filed their defence thought the Federation of Kenya Employers. Hearing proceeded on 5/2/2015.

**The Claimant's case**

2. The Claimant's case is that on 2/7/2012, he was employed by the Respondent as a Double Checker as per the letter of appointment- Appendix 1A. The salary attached to this post was Kshs.23,000/= subject to all statutory deductions as per the Kenyan Tax Laws. He was also entitled to breakfast and lunch which attracted a deduction of Kshs.1,500/= from his monthly pay.
3. It is further the Claimant's case that he worked for Respondent diligently until 26/4/2014 at 2.30 pm when he was confronted by the Respondents Area Manager one Dan and George who quarreled him for apparently refusing to answer their call. They demanded to know where he was on 19/4/2014 and he told them that he was on sick off having previously been involved in an accident. They accused him of being rude. On the same day Dan informed the Claimant that the management had decided to have him rest. He avers that he did not understand what they meant but he just took his things and left.
4. On 28/4/2014 he wrote a letter asking for his termination letter (Appendix 1B). He handed it over to the Area Manager. He asked for a response. On 29/7/2014 at 2 pm he was called by one Patman who told him to go to the office and pick his terminal dues. He went to the office on 30/7/2014 and was asked to sign in a file. He declined wanting to see his cheque instead. He was then issued with a letter appendix 3. The letter was a response to the one he wrote dated 28/4/2014.
5. The Claimant then proceeded to file this case whereby he seeks to be paid his terminal dues. He aver that the Respondents terminated his services unfairly after alleging wrong doing on his part alleging he had wanted to fight a staff member which was decided without any hearing. He also avers that the letter the Respondents are seeking to rely on against him are fake. He singles out the Respondents Appendix 6 and his Appendix 1B which are different having been inserted in words claims and Nairobi. He states that Appendix 6 is a forgery.

6. In response to the Respondents defence that he refused to sign records, the Claimant denies this and states that he used to sign all records as evidenced from Appendix 4. He denies refusing to sign his resignation letter and avers that he only received Appendix 3 and not any other. He contends that the Respondents Appendix 4 talks of one James Orwoch Owuor and he is not Owuor. About Appendix 7, he states that he had never seen it before but was seeing it for first time in court. On previous warning – Appendix 12 he contends that it had expired and so is not relevant to this case and so is Appendix 13.

7. Having considered evidence of both parties, the issues for consideration are as follows:-

1. Whether the Claimant resigned or was terminated from work.
  2. If terminated, whether the termination was fair or justice and if he resigned;
  3. What remedies are available to him.
8. On the issue of the separation of the contract between the Claimant and Respondent Appendix 6 attached to Respondents defence reads as follows:

“The Operation Director

*Mr. Tshepo Monnanyana*

*P.O. 5811, Nairobi*

*Dear Sir*

**RE: TERMINATION OF SERVICE/CLAIMS**

*I hereby demand that I worked for you diligently and honestly as a Double Checker at a salary of 23,000 ksh since 02-07-2012 up to date, when you issued to me a warning letter and forcing me to sign it, the offer declined. (emphasis is mine). The allegations which I totally refuse and claims to be founded on malice on your part.*

*On view of the above I feel I never committed any serious offence since I was absent from the blessing of Mr. George (the Coordinator) who has not distanced himself from this issue and decided to falsify the issue.*

*Therefore I am asking for my lawfully and rightful annual leave, salary arrears, public holidays worked and pending off days.*

*I now demand immediately admission of my dues computed thus:*

- a. *Salary in lieu of notice 69,000 Ksh.*
- b. *Service 18/30 x Kshs.23,000 x 2 years = 95,762*
- c. *Annual leave 26 days 26/30 x 23,000 x 2 years = 129,782*
- d. *Public Holidays 21 days = 35,119*
- e. *Lunch deductions = 10,500*
- f. *Issuance of Certificate of Service*

**Total Kshs. 210,381/=**

*I believe that this is a matter that can be resolved without having to recourse to the legal process.*

*Kindly let me have your cheque for Kshs.210,381.*

*Signed*

9. The letter is dated 28/4/2012. The Claimant had stated that he was sacked by Respondents on 26/4/2012 so this letter was written 2 days after the alleged sacking. From Claimant's evidence he was verbally terminated on 26/4/2012. However the letter of 28/4/2012 does not talk of a verbal sacking. The letter talks of an alleged issuance of a verbal warning purporting that he had been absent from work without permissions. If indeed, the Claimant had been verbally terminated, this would have been part of his letter dated 28/4/2012.
10. The Claimant in his evidence alleges that this letter is a forgery. However in his own claim, he attached Appendix 1B which has similar words to the effect that he had been issued with a verbal warning letter stating he was absent from work which he refutes. The letter Appendix 1B was replied to vide Appendix 3 which the Claimant does not refute save that he received it on 30/7/2014 though it is dated 23/5/2014. In this letter, the Respondents answers each demand made by the Claimant and are of the view that the Claimant is not entitled to the claim save for the 16 days leave days, public holidays – Kshs.15,925/= and lunch deductions of 4,500/=. The Respondents also want the Claimant to pay the company one months salary in lieu of notice.
11. From evidence of Respondent, the Claimant was absent from work and when confronted about the same on 26/4/2014, he chose to leave his work. Whether he had been absent with or without permission is no longer material because the Claimant in his own volition wrote a letter terminating his own engagement with the Respondent and seeking his dues. His assertion that he was terminated by the Respondent is therefore not true and this court finds that he resigned from work on his own account.
12. Having found that he resigned from work, the issue of fairness or unfairness of the process leading to the resignation is no longer material. There were internal mechanism of solving any dispute which the Claimant chose not to pursue and this led to his own resignation.
13. Is the Claimant then entitled to any remedies?. Given that the Respondents have admitted owing Claimant some dues I enter judgment for Claimant on the said admission being:

1. 16 days leave =  $16/21 \times 23,000 = 17,524/=$
2. Public Holidays = 15,925/=
3. Lunch deductions = 4,500/=
4. Issuance of Certificate of Service

**Total = Kshs. 37,952/=**

14. Since the Claimant was a member and contributor to NSSF scheme, he is not entitled to service pay or gratuity as provided under Section 35(6)(d) of the Employment Act.
15. The Claimant resigned from employment without notice. He is therefore obliged to pay the Respondents 1 month salary in lieu of notice = Kshs.23,000/=.

What is therefore due to the claimant is Kshs.37,952 les 23,000/=

Balance = 14,952/=.

16. The Claimant will also be issued with a Certificate of Service. Since the Claimant was offered his dues and he chose to come to court he is not entitled to any costs.

It is so ordered.

Read in open Court this 24<sup>th</sup> day of February, 2015

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Claimant in person

No appearance for Respondent