



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT MOMBASA
CAUSE NO. 220 OF 2014
ATHUMANI LALICLAIMANT
VERSUS
KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL,
HOSPITAL & ALLIED WORKERS.....RESPONDENT

J U D G M E N T

INTRODUCTION

1. The Claimant brings this suit claiming to be the Deputy National chairman of the respondent, a trade union registered to champion the interests of domestic, hotels, Educational Institutions, Hospital and Allied Workers in Kenya. He avers that between June 2007 and March 2014, the respondent failed to pay his salary and allowances amounting to ksh.2,025,000 and prays for judgment for that sum.
2. The respondent has denied that the claimant was still her Deputy National Chairman and averred that he ceased to hold such on 27/2/2011. In addition the respondent avers that the claimant like all other elected officials of the union was only entitled to ksh.2000 for conference and sitting allowance per attendance and not monthly salary as alleged in the suit. It is further defence case that the cheque for ksh.20000 made to the claimant on 17/9/2012 was gratuitous pay towards his medication after he had been retired from Nyalı International Beach hotel on 23/11/2011 on medical grounds.
3. The suit was heard on 30/10/2014 when the claimant testified as Cw1 while the respondent called Joseph Ole Keyua as RW1. Thereafter both parties filed written submissions for consideration in this judgment.

CLAIMANTS CASE

4. CW1 stated that he is the Deputy National Chairman of the Respondent and also the Chairman of the Mombasa branch of the respondent. He explained that he was also mandated to recruit members in coastal region and prevent poaching by rival union. He produced an abstract from the Registrar of Trade Unions dated 16/5/2007 to prove that he was appointed the Deputy National Chairman on 31/7/2004. He contended that he used to receive ksh.10000 as monthly allowance from Head quarters (HQ) and ksh.5000 from the Branch office. In addition he used to receive sitting allowance.
5. He told the court that between June and December 2007 he was not paid ksh.15000 by the said two offices. From January and October 2008 he was paid nothing except in November 2008 when he was

paid ksh.20000 from the HQ. Between December 2008 and December 2009 he was also not paid anything but in January 2010 he was paid ksh.20000. From February 2010 he was not paid anything except ksh.20000 which was paid to him on 17/9/2012. He produced copies of the cheque and bank statements filed as Appendix LM2-6 (Exh.10) and prayed for ksh.1,025,000 being the unpaid allowance for the period between June 2007 and March 2014. He clarified that the said sum due is net of of the sum of ksh.100,000 under Exhibit 1 above.

6. On cross examination by the defence counsel, CW1 maintained that he was still the Deputy National chairman of the Respondent. He denied knowledge of any elections done in February 2011. On being shown an abstract from the Registrar of Trade Unions dated 22/1/2011 and 23/6/2014, CW1 confirmed that he ceased being an official of the respondent both at the branch and national level from February 2011. On being shown letter dated 24/1/2011 by the Registrar of Trade Union, CW1 confirmed that he had raised an objection after the elections in February 2011 but was advised to go to court. He however maintained that there was no elections done because he had obtained a court order stopping the same. He also denied ever receiving th said letter dated 24/1/2011 and insisted that he was entitled to payment of allowances from July 2007 till the date he ceased being in office.

7. He admitted that he filed this suit out of time and explained that he did not know that he was required to file it within a period of 3 years. In addition he maintained that he persistently demanded for his rightful allowances, but he was paid by installments the last one being cheque No.108496 dated 17/9/2012 drawn by the respondent. He denied ever going to beg for any medical assistant from the respondent and maintained that he was demanding for his lawful dues. He explained that all sitting allowances were paid during the respective meetings while the rest of the allowances were paid monthly. He however admitted that he was retired from hotel job on medical grounds on 23/11/2011.

DEFENCE CASE

8. RW1 is the National Chairman of the respondent since 21/6/2011. He confirmed that CW1 was his Deputy from 2004 to 27/2/2011 when Cyrus Nyaga Njue became the Deputy National Chairman. He produced copy of extract of officials dated 23/6/2014 as D. Exhibit 1. RW1 also confirmed that CW1 was the chairman Mombasa Branch until 22/1/2011 when Livingstone Ambuko was elected the Branch Chairman as per he Extract of official dated 25/1/2011 (D. Exhibit 2). RW1 explained further that CW1 objected to the said elections but the Registrar rejected the objections by letter dated 24/1/2011 (D.Exh.3).

9. RW1 explained that the official of the union are only paid sitting and transport allowances and denied that CW1 was entitled to any regular salary as prayed in the suit. He admitted that CW1 was paid some money in 2011 and 2012 but he clarified that the same was only an assistance due to his ill-heath and not monthly allowance.

10. On cross examination by the claimant's counsel, RW1 admitted that the General Secretary of the respondent was the person in charge of administration in the union. He contended that an official is removed from office by election. He maintained that the extract from the Registrar is the evidence that elections were done. He admitted signing the cheque No. 108496 for ksh.20000 in favour of CW1 on 17/9/2012 but maintained that the same was only to assist CW1 after he lost his employment on medical grounds. He explained that, that payment was a service to member under the union constitution.

ANALYSIS AND DETERMINATION

11. After carefully perusing and considering the pleadings, evidence and the submissions it is clear that CW1 was the chairman of the respondents Mombasa branch and also the Deputy National Chairman of the union from 2004 to January 2011 and February 2011 respectively when he ceased holding the said offices. There is also no dispute that during his tenure in office CW1 was entitled to sitting and travelling allowances when attending meetings and conferences. The issues for determination are whether he was entitled to any regular monthly allowance and if so whether the claim is time barred.

Monthly allowances

12. No evidence was adduced by the claimant to prove that he was entitled to any regular monthly allowances of ksh.10000 and ksh. 5000 from the HQ and Branch office respectively. Whereas Section 39 of the Labour Relations Act (LRA) allows trade unions to use their funds to pay salaries and allowances to their officials, it leaves it open to the respective unions to decide which of its officials have to earn a salary or allowances and to what extent. The claim herein being one not based on employment contract, the respondent had no obligation of producing employment records to disprove the claimant's verbal allegations about the claimed monthly allowances. The court therefore takes judicial notice of the fact that unless otherwise proved, trade unions elected officials like CW1 are by law honorary and not executive. Consequently, unless contrary is proved, an honorary official like CW1 is only entitled to sitting, travelling and subsistence allowances while on official duties for the union and not regular unspecified allowances. It follows therefore that without any formal resolution by the General Membership of the union or express provision of the constitution of the Union, the honorary officials can not draw any regular and unspecified monthly allowances as alleged by the claimant. The above finding is corroborated by the evidence of RW1 who stated in evidence that CW1 was only entitled to sitting and transport allowance of which CW1 admitted in evidence that he used to receive all such allowance during the meetings when he attended.

13. In view of the finding above that CW1 was not entitled to any other allowances over and above the sitting and transport allowances, the court does not see the need to answer the aforesaid issue of limitation of time. In any case the court believes the uncontested evidence by RW1 that the few payments to CW1 after he left office were service to a member to assist in medication as provided for under the union constitution.

DISPOSITION

14. For the reasons above stated, the suit is dismissed. Each party to bear his or her own costs.

Dated, signed and delivered this 13th March 2014

O. N. Makau

Judge