



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO. 310 OF 2012

JOHN LUBIAH ODIMWAH CLAIMANT

VERSUS

NORTHSTAR PACKAGING LIMITED RESPONDENT

Mr. Odama for the Claimant

Mr. Njuguna for the Respondent

JUDGMENT

1. The Claimant filed a Memorandum of Claim on 27th February, 2002 seeking;

- i. one months' salary in lieu of notice in the sum of Ksh.13,938.00
- ii. refund or remittance of NSSF in the sum of Ksh.6,800.00
- iii. unpaid leave for seven (7) years in the sum of Ksh.97,566.00

2. Facts of the Claim

The Claimant states that he was employed as a casual by the Respondent in September, 2000 and was employed on permanent terms on 5th March, 2003 as a Machine Operator. He was paid a basic salary of Ksh.4,000.00 and House Allowance of Ksh.2,550.00.

3. He worked continuously until 30th October, 2011 when his employment was terminated after he complained about injuries to his knees in the course of his duty and sought to be compensated.

4. The Claimant was then asked to go away and bring Ksh.3,000.00 which he owed the Respondent. He admitted he had a salary advance of Ksh.8,300.00 which he wanted the company to deduct from his salary. The employer instead sent him away to bring the money. The Claimant went and did not come back to work. At the time he earned a salary of Ksh.9,460.00 and House Allowance of Ksh.2,550.00 and daily Travelling Allowance of Ksh.60.00. He produced a payslip to that effect.

5. The Claimant states that he was not granted any leave for seven (7) years but only went on short emergency offs.

6. He seeks payment as per the Statement of Claim.

7. It was put to him that he deserted work when the Respondent declined to advance him more money because he had not repaid Ksh.8,300.00. He denied the suggestion. The Respondent also denied not remitting any of NSSF deductions as claimed or at all and produced a statement. The Claimant admitted under cross-examination that he was paid in lieu of leave at the end of each year.

8. RW1 was Philip Munubi. He told the court that the Claimant was not dismissed but went on leave and never came back to work until 7th November, 2011, with a letter asking for a loan. RW1 said that the Claimant already had a loan of Ksh.8,300.00 and therefore could not get a further advance.

9. RW1 also denied that the Claimant's employment was terminated and stated that the Claimant had absconded from work.

10. The matter was reported to the labour office. The Conciliator found that the Respondent owed the Claimant Ksh.2,135.00 in lieu of leave and the Claimant owed the Respondent Ksh.8,300.00. The Claimant never came back to work from then.

11. The witness also demonstrated that all NSSF and NHIF dues were remitted for all employees including the Claimant.

12. The Respondent urges the court to dismiss the claim with costs.

13. **Determination**

The court is not satisfied that the Claimant was dismissed from work. The Claimant absconded from work when asked to pay Ksh.8,300.00 he owed the Respondent. The claim for payment of one month salary in lieu of Notice is therefore dismissed.

14. The court is also satisfied that the Respondent had remitted all NSSF and NHIF deductions for all employees including the Claimant.

15. The Claimant has also failed to prove that he was not granted annual leave for seven(7) years since the Respondent produced documentary evidence showing that the Claimant took leave and was paid in lieu of any leave days not taken at the end of the year.

16. The entire suit is dismissed with costs to the Respondent.

Dated and Delivered at Nairobi this 13th day of March, 2015.

MATHEWS N. NDUMA

PRINCIPAL JUDGE