



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1179 OF 2012

(Before Hon. Justice Hellen S. Wasilwa on 23rd April, 2015)

FRANCIS WAWERU GIKONYO.....CLAIMANT

VERSUS

PRINCESS CAB & CAR HIRERESPONDENT

JUDGMENT

1. The Claimant herein Francis Gikonyo filed his Memorandum of Claim in person on 12/7/2012. His claim is for unfair termination of services by the Respondent herein.

Claimant's case

2. The Claimant avers that he was employed by the Respondent on 19/3/2008 as a PSV driver. He entered a written contract with the Respondent and his salary was 12,000/= which later rose to 13,000/= per month. He avers that he executed his duties diligently and smoothly until 30/6/2011 when the Respondent terminated his services apparently for extending his leave.

He avers that for the 3 ½ years he worked for Respondent, he worked daily including during public holidays. He further avers that he did his work diligently and had no trouble at work. He wants court to direct the Respondent to pay for his leave for the 3 ½ years, service pay and damages for unlawful termination. He also prays to be paid overtime for 4 hours daily total 890 hours of overtime.

3. In cross examination, the Claimant was able to retain the leave forms he filed from page 33 to 35 of Respondents bundle. He also confirms that his last contract was for 1 year and could be renewed subject to performance. He expected it to be renewed. He also confirmed that he was not paid service pay but that the Respondents were paying his NSSF. He also confirms that he was given a Certificate of Service.
4. The Respondents filed their amended Statement of Response on 10/12/2012 through the firm of Njenga Mbugua & Nyanjua & Company Advocates. It is their evidence that the Claimant worked for them under different contract with the last one ending in June 2011. During the subsistence of the last contract however, the Respondent avers that the Claimant's performance was wanting. He was stubborn and refused to follow instructions. At one time he was given 7 days leave and he extended the period by 2 weeks and during the same period he was seen driving another vehicle. When the contract expired the Respondents chose not to renew it due to his wanting performance. They deny that the claimant worked for 24 hours daily but worked for 3 days a week and rested for 4 days. That all his overtime was paid and the claim should therefore be dismissed.

Issues for determination

5. Considering evidence of both parties issues for determination are as follows:

(a). Whether the Claimant's services were terminated.

(b). If so if the termination was justified.

(c). If the Claimant is entitled to prayers sought.

6. On the 1st issue, the Claimant served on contract and his last contract was the one dated 24th June 2010 which was with effect from 1st July 2010. The contract was for one year ending June 2011. It was renewable subject to performance. Time of work is indicated as 6 am to 6 pm for day shift and 6 pm to 6 am for night shift. Overtime was payable. The salary was 13,500/= consolidated per month. The reading of this contract shows that the contract was to end on 30/6/2011 and this is the period when the Claimant avers that he was terminated. This in my view is not a termination but that the contract came to term by effluxion of time. The Claimant's allegation that he was terminated is therefore not true.

7. Having found as above what remedies is the Claimant entitled to?. The Claimant has claimed among other prayers payment for overtime. From the contract, time of work was 12 hours daily and this translates into 4 hours of overtime daily. The Respondent avers that they paid for overtime but have not given any proof of this payment. It is therefore this court's finding that the Claimant is entitled to overtime pay which is equivalent to:

4. Hours x 30 = 120 per month x 42 months (3 ½ years). This translates to 5040 hours x the hourly rate of 37.5 x 2 = 5040 x 37.5 x 2 = 378,000/=

That is all I find for Claimant and order he be paid. He has already been issued with a Certificate of Service and also contributed to NSSF and so service pay is not payable.

The Respondent will also meet costs of this suit.

Dated in open court this 23rd day of April, 2015.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Owang for Respondent

Claimant present