



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 153 OF 2014

(Before Hon. Justice Hellen S. Wasilwa on 7th April, 2015)

ALEXANDER OICHOE AKARA.....CLAIMANT

VERSUS

AFROLIQUE KENYA LIMITEDRESPONDENT

JUDGMENT

Introduction

1. The Claimant herein Alexander Oichoe Akara filed his Memorandum of Claim in person on 11/2/2014. The Respondents were served with summons and a copy of the said Memorandum on 13/3/2014 as per the return of service filed in court on 8/7/2014. They did not enter any appearance or file any defence.

The case was then fixed for Formal Proof and the hearing was done on 4/2/2015.

Claimant's case

2. The Claimant's case is that he is a driver. He used to work for the Respondent from July 2005. There was no formal written appointment letter. His salary was Kshs.20,000/= per month.

On 20th November 2011, the Respondent sacked the Claimant. The Claimant avers that on this day, he went for his son's graduation in town and when he went back to work, the Respondent chased him away. He was orally terminated. He later came back and asked the Respondent for his terminal dues but the Respondent declined to pay him.

It is the Claimant's case that the termination was unlawful as he had permission to go for the graduation. He was not paid his November 2011 salary.

The Claimant further avers that in January 2011, the Respondent returned him to work but resorted to paying him ½ salary i.e. 10,000/=. They disagreed over this salary and the Respondent chased him away in February 2011. The Claimant went away and sought help from Kituo Cha Sheria and was assisted and advised on how to file this case.

His claim is for payment of his terminal dues and service pay.

Issues for determination

3. Upon hearing the Claimant herein I find his claim unchallenged by the Respondents who were served. He exhibited Appendix 1 being his drivers pass showing he was a driver and the pass allowed him to drive one Bang Baburam. He was not issued with any other employment letter detailing his terms and conditions of engagement which is contrary to Section 9(1) and (2) of the Employment Act which states that:-

(1) A contract of service:-

(a) for a period or a number of working days which amount in the aggregate to the equivalent, of three months or more; or

(b) which provides for the performance of any specified work which could not reasonably be expected to be completed within a period or a number of working days amounting in the aggregate to the equivalent of three months, shall be in writing.

(2) An employer who is a party to a written contract of service shall be responsible for causing the contract to be drawn up stating particulars of employment and that the contract is consented to by the employee in accordance with subsection (3).

Further Section 10(7) envisages a situation where there is legal proceedings and no employment contract is produced. The burden of proving or disproving an alleged term of employment stipulated in the contract shall be on the employer.

In the absence of the Respondent's evidence, the court relies wholly on evidence adduced by the Claimant which I find established on a balance of probability. I find for Claimant and I award him as follows:

(1) I declare his termination unlawful and unfair.

(2) I award him 1 month salary in lieu of notice = Kshs.20,000/=.

(3) Payment for November 2011 salary = Kshs.20,000/=.

(4) ½ salary for month of January 2012 = Kshs.10,000/=.

(5) Service Pay equivalent to 1 month salary for each

year worked being 6 years = 20,000 x 6 = 120,000/=.

(6) 12 months salary as compensation for

unlawful termination = 20,000 x 12 = 240,000/=.

TOTAL Awarded = Kshs.410,000/=

Less statutory deductions

(7) He shall be issued with a Certificate of Service.

(8) The Respondent to pay costs of this suit.

Dated and delivered in open court this 7th day of April, 2015.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Claimant – present

No appearance for Respondent