



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1791 OF 2011

(Before Hon. Justice Hellen S. Wasilwa on 14th July, 2015)

NICHOLAS SHISUNGU EHIRICLAIMANT

VERSUS

AL MADINA INVESTMENTS LIMITEDRESPONDENT

JUDGMENT OF THE COURT

1. The Claimant herein Nicholas Shisungu Ehiri filed his Memorandum of claim on 11/10/2014 through the firm of Osoro Omwoyo and Company Advocates.

The Claimant's issue in dispute is his alleged wrongful and unlawful termination of service and failure by the Respondent to pay him his termination benefits.

2. The Claimant's case is that he was employed by the Respondent on 5/8/2009 as a conductor. He served the Respondent with loyalty and diligence and then was dismissed by the Respondent without adherence to the dictates of the law.

The Claimant has exhibited Appendix 1 being a document purportedly written by the Respondent showing what his dues were on 13/12/2010. The Claimant therefore seeks payment of his dues as enumerated in the Memorandum of claim all totaling 120,110/=.

3. The Respondent filed his Memorandum of Defence on 24/11/2011 through the firm of Betty Rashid and Company Advocates.

The Respondents deny ever dealing in scrap metal business nor even employing the Claimant. It is their averment that their only business is in communication and mpesa where they have employed two ladies.

In relation to Appendix 1, the Respondents aver that it is not their document.

In relation to the 2nd Appendix, the Respondents aver that it does not show how Saleh Hussein is connected to the Respondent.

4. The Respondents prays that this claim be dismissed with costs to the Respondent. The Respondents further annexed his NSSF statement to show he was an employee of the Metal Merchants Limited from 2000 to 2010. He also annexed the City Council of Nairobi Licence granted to Respondent showing they do Mpesa and retail of scratch cards business.

5. Having considered evidence on record plus submissions of the parties the issue for determination are as follows:
 1. ***Whether the Claimant was an employee of the Respondent.***
 2. ***Whether the Claimant was dismissed by the Respondent as alleged.***
 3. ***If so what remedies the Claimant is entitled to.***
6. On the 1st issue, the Claimant annexed his Appendix 1 – a paper without much authority showing some calculations and the name of the Respondent as an appendage. The same Appendix is not an appointment letter nor any contract of any value.
7. The Respondents denied connection to the Claimant and it would have been prudent for the Claimant to call more evidence to show his connection to the Respondent. He who alleges must prove. But as the evidence of Claimant stood, the Respondent adduced evidence to show he was an employee of another company during the same period and never employed the Claimant.
8. The Respondents also showed evidence through the licences he got from the Municipal Council that they were in the business of Communication and Mpesa and not scrap metal and so when Claimant alleged that the Respondent was in business of scrap metal, he had to prove the same.
9. The Claimant's evidence is below the standard required. There is no proof of an employment relationship between him and Respondent.
10. Having found as above this court need not belabour the 2nd and 3rd issues.

I find that the Claimant has not established his case to the standard expected and I dismiss it accordingly with no orders as to costs.

Read in open Court this 14th day of July, 2015

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Claimant

No appearance for Respondent