



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT

AT NAIROBI

CAUSE NO. 568 OF 2013

EDWARD MASINDE JUMA.....CLAIMANT

-VERSUS-

KAMPALA COACH LTD.....RESPONDENT

JUDGMENT

The claimant herein Edward Masinde Juma instituted this claim against the respondent Kampala Coach Limited alleging unlawful termination/constructive dismissal and refusal to pay salary arrears and terminal benefits.

The claimant alleges that he was employed by the respondent, a bus company registered in Kenya, as a driver. He was employed on 18th August 2009 and terminated on 1st February 2013. He prays for the following orders:-

1. The termination of the grievant/claimant be and is hereby declared unlawful and hence null and void.
2. The respondent to re-engage all the grievant/claimant in work comparable to that in which the grievant/claimant were employed prior to their dismissal or other reasonably suitable work at the same wages with no loss of benefits together with salaries and allowances in arrears for both the period they have been working and out of office/work.
3. Reinstate the grievant and treat them in all aspects as if the grievant employment had not been terminated.

The claimant demand for monetary compensation as under:-

1. The respondent be ordered to pay the grievant/claimant terminal dues as enumerated under Clause No. 2(1) sum of Kshs 938,533.32.
2. Interest on Clause 2(1) from date of termination until payment in full at court rates.
3. Any other statutory entitlements.
4. The respondent do issue the grievant with certificates of service.
5. The respondent to pay legal costs in this suit.

The respondent was served with summons on 26th April 2013 as evidenced by the affidavit of service of Ishmael Elisha Esikote sworn on 6th May 2013 and filed in court on 7th May 2013. The respondent entered appearance by its memorandum of appearance dated 16th May and filed in court on 26th August 2013 together with a Defence of the same date through Omariba & Co. Advocates. On 10th October 2012 Soita & Saende Advocates filed a notice of appointment by the respondent.

The case was fixed for mention on 10th March 2014 when the claimant was represented by Mr. Ongicho instructed by Ongicho-Ongicho & Co. Advocates while there was no appearance by the respondent.

After confirming that the respondent was properly served with a mention notice I allowed the claimant's advocates application to proceed by way of written submissions. The claimant was granted 14 days to file and serve written submissions while the respondent was also given 14 days from date of service to file and serve its written submissions.

On 7th April 2014 when the case came up for mention the respondent who had not filed submissions was granted a further 14 days to file and serve its written submissions. The case was fixed for mention on 7th May 2014 to confirm compliance and take a date for judgment.

On 7th May 2014 when the case was called out in court Mr. Ongicho was present for the claimant but there was no appearance for the respondent. The respondent had also not filed its written submissions. I proceeded to fix a date for judgment with orders that the claimant serves notice of judgment upon the respondent. As at the date of writing judgment the respondent had not filed its written submissions.

In the written submissions the claimant submits that the respondent's defence contains mere denials and attempts to shift the statutory burden of proof to the claimant.

In the defence filed on 26th August 2013 the respondent admits the claimant was in its employment but denies refusing to pay the claimant salary arrears for 9 months. The respondent also denies that the claimant accumulated any overtime.

I have considered the pleadings and the claimant's written submission. Apart from proving that the claimant was employed by the respondent as admitted in the Response, the claimant did not adduce any evidence on the salary he was earning, or proof of termination of his employment. He has also not submitted any evidence to prove that he worked any overtime or that he is owed any arrears of salary by the respondent as alleged.

When parties choose to proceed by way of written submissions, they take the risk of their claim being dismissed unless there is sufficient uncontested or incontrovertible documentary evidence. In this case the claimant chose to proceed by way of written submissions but did not even as much as file either a witness statement or affidavit to prove the allegations in the claim. There are no documents to prove his case.

I find the claim not proved and dismiss it with no orders for costs.

Dated and signed at Kisumu this 16th day of June, 2015.

MAUREEN ONYANGO

JUDGE

Delivered in Nairobi this 7th day of July, 2015

HELLEN WASILWA

JUDGE

In the presence of:

Ongicho..... for claimant

N/A..... for respondent