



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 182 OF 2014

GEORGE NGURE MBURUCLAIMANT

v

JOSEPH WANJAU KARITU

t/a HOTEL JOSKA LIMITED.....RESPONDENT

JUDGMENT

1. George Ngure Mburu (Claimant) was employed by Joseph Wanjau Karitu t/a as Hotel Joska Limited (Respondent) on 1 February 1999 as a waiter through a letter of appointment dated 25 January 1999.
2. On 1 June 2013, the Claimant gave the Respondent a 2 month notice of resignation and on 10 September 2013, he wrote another letter requesting for his dues.
3. On receipt of the letter, the Respondent dispatched to the Claimant a cheque for Kshs 120,000/- as terminal dues. The Claimant was not satisfied and made a demand through his legal advisers and on 4 June 2014, he commenced legal action against the Respondent alleging unfair remuneration/underpayments and seeking Kshs 172,342/- on account of contractual/terminal dues.
4. The Respondent filed a Response on 24 July 2014, to which the Claimant filed a rejoinder on 7 August 2014. The Cause was heard on 28 April 2015, and the Claimant filed his submissions on 11 May 2015 while the Respondent filed its submissions on 29 May 2015.
5. The Respondent opted not to call any witnesses.
6. The Court has considered the pleadings, evidence and submissions and identified the questions for determination as, *whether the Claimant was underpaid/is owed house allowance and appropriate remedies/statutory or contractual entitlements.*

Underpayments

7. The Claimant was engaged as a Waiter. In his testimony, he stated that on employment in 1999, his wage was Kshs 2,500/-.
8. In January 2003, the wage was increased to Kshs 4,500/-. Another increment was in 2006 to Kshs 5,000/-, which he earned until February 2010, when the wage was increased to Kshs 6,000/-.

9. In both the pleadings and testimony, the Claimant did not give a breakdown of the underpayment or make reference to any particular Regulation of Wages Order applicable to the industry/sector he was employed in, except to state that his wage of Kshs 6,000/- was below the prescribed minimum wage and that he was underpaid for 3 months from 1 May 2013 to 30 July 2013.

10. The Court is therefore unable to determine whether the Claimant was underpaid or not.

House allowance

11. The Claimant's letter of appointment did not provide the remuneration and benefits. It is therefore not clear whether the remuneration he was earning was inclusive of house allowance.

12. The Claimant did not provide sufficient evidentiary details on this particular item. It was not disclosed whether he was provided with accommodation or not.

13. Neither did he disclose how much he was entitled to on account of house allowance.

Appropriate remedies/statutory and contractual entitlements

14. The Memorandum of Claim did not expressly set out the terminal dues or contractual entitlements the Claimant were seeking except to state the grand total.

15. Paragraph 6 merely made reference to dues while paragraph 10 contended that the Claimant had not gone on leave during the employment. Paragraph 12 asserted that the Claimant was not paid terminal benefits and contractual dues contrary to the provisions of the Employment Act No. 11 of 2007.

16. The breakdown of Kshs 172,342/- pleaded in paragraph 14 of the Memorandum of Claim was not disclosed. During testimony, no breakdown was given.

17. The only inkling of the terminal or contractual dues the Claimant was seeking appear to be those set out in his letter dated 10 September 2013 where reference was made to leave not taken for 14 years, public holidays and off duties.

18. With no evidence as to the public holidays worked or off duties not granted given so as to lay a foundation for these entitlements and the amounts sought under each item, the Court is unable to find in favour of the Claimant.

19. On the question of leave, the Claimant did not put any sum due were the same to be commuted into cash.

20. Most of what the Claimant sought was in the nature of special damages. No attempt was made at computing the same.

21. The Claimant's pleadings were vague and the testimony did not shed any clarity on exactly what he was seeking and how the figure of Kshs 172, 342/- was arrived at. The prosecution of the claim was also carried out casually. It was dilatory at best.

22. With the material placed before the Court, the Court is unable to determine whether the Kshs 120,000/- paid to the Claimant was not sufficient as final dues.

Certificate of Service

23. This is a statutory right and the Respondent should issue one to the Claimant forthwith.

Conclusion and Orders

24. From the foregoing, save for a Certificate of Service, the Court finds no merit in the claim and orders that the Memorandum of Claim filed in Court on 4 June 2014 be dismissed with costs to the Respondent.

Delivered, dated and signed in Nakuru on this 3rd day of July 2015.

Radido Stephen

Judge

Appearances

For Claimant Ms. Kahunga instructed by Nyagaka S.M. & Co. Advocates

For Respondent Ms. Muthoni instructed by Karanja Mbugua & Co. Advocates

Court Assistant Nixon