



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 285 OF 2013

MENENGAI OIL REFINERIES LTD.....CLAIMANT

V

KENNETH MACHARIA NDERITU.....RESPONDENT

JUDGMENT

1. Menengai Oil Refineries Ltd (Claimant) commenced legal action against Kenneth Macharia Nderitu (Respondent) on 27 August 2013 seeking Kshs 29,900/- which it had allegedly overpaid to the Claimant on account of 3 months wages after his resignation.
2. The Respondent filed a Response and Counterclaim on 10 February 2014, which prompted the Claimant to file Defence to Counterclaim on 7 March 2014.
3. The Cause was heard on 9 July 2015. The Respondent filed his submissions on 31 August 2015 while the Claimant did not file any submissions.
4. The background facts are rather straightforward and not in dispute.
5. The Claimant's case is that the Respondent resigned from its employment on 9 March 2012. He did not issue a 1 month notice or pay in lieu of notice as required.
6. Despite the resignation, the Claimant continued to remit to the Respondent's bank account wages for 3 months totaling Kshs 34,900/-. When the same was discovered, the parties engaged and the Respondent committed in writing through a letter dated 20 July 2012 to refund the same and the Respondent paid Kshs 5,000/- through mpesa as initial repayment.
7. According to the Claimant's witness, the Respondent was an ungraded Artisan earning about Kshs 11,000/- per month and after his resignation, the Claimant erroneously continued paying him wages.
8. The Claimant commenced the present action when the Respondent failed to clear the balance.
9. In his Response and Counterclaim, the Respondent countered that he gave 1 month notice of resignation and that he was coerced to admit he owed the Claimant Kshs 34,900/-.
10. He further countered that he was being paid Kshs 13,300/- yet according to the prescribed minimum wages at the material time he should have been earning Kshs 19,323/-. He contended that he was thus underpaid by Kshs 6,023/- per month for 3 years and 2 months, totaling Kshs 228,874/- which he seeks to be set off against the Claimant's claim.
11. There are only 2 issues for determination. These are *whether the Respondent was underpaid and whether monies paid under mistake are recoverable through the judicial process.*

Whether Respondent was underpaid

12. Minimum wages are prescribed for distinct occupations and areas of the country.
13. According to the Respondent, he was employed initially as a casual labourer but was later engaged as a Laboratory Technician in the Claimant's Quality Control Laboratory and that he furnished the Claimant with his certificates after he was confirmed into permanent employment.

14. He stated that he had a Bachelor of Science degree in Industrial Chemistry from Makerere University.
15. The Respondent did not disclose when he obtained his degree from Makerere University or whether he was registered by the relevant regulatory bodies, if any.
16. The Court is therefore unable to concede to the invitation by the Respondent that he was underpaid.

Whether money paid under mistake is recoverable

17. This cause of action used to fall under money had and received principle. It has evolved presently to the cause of action falling under the general term of law of restitution.
18. The Claimant's contention was that the continued payment of wages to the Respondent was due to a computer error. The Respondent did not challenge this testimony.
19. The Court therefore finds that the money was paid under mistake and is recoverable (see *Kleinwort Benson Ltd v Lincoln City Council* (1999) 2 AC 349).
20. Further the Respondent committed in writing to refund the mistaken payments after discussions with the Claimant's managers.

Terminal dues

21. The Respondent in his testimony stated that he was not paid terminal dues including overtime and outstanding accrued leave.
22. The Respondent did not prove the agreed contractual or at any rate prescribed hours within the sector the Claimant operates to lay a basis for claiming overtime. The amount was not computed (no attempt at computation of hours and amount).
23. The Claimant produced leave records for the Respondent for a total of 21 days for the year 2009 (taken in 2010) and for 2010/2011 taken in 2011.
24. No records for 2011/2012 were produced.
25. The Respondent did not demonstrate that he was entitled to any dues or payments on account of overtime but it appears he had outstanding leave 2011/2012.
26. He would be entitled to the same but no computations were placed before Court.

Conclusion and Orders

27. The Court finds and holds that

- i. the Respondent was not underpaid
- ii. the Respondent owes the Claimant Kshs 29,900/-

28. The Court orders the Respondent to pay the Claimant Kshs 29,900/- less any amounts owed in respect of outstanding leave for 2011/2012.
29. The Claimant was ordered to pay Court adjournment fees and Respondent's costs of Kshs 4,500/- on 19 November 2014. According to the Respondent's written submissions, his costs have not been paid. The same should be recovered/deducted from the judgment amount.
30. Each party to bear own costs.

Delivered, dated and signed in Nakuru on this 6th day of November 2015.

Radido Stephen

Judge

Appearances

For Claimant

Mr. Terer instructed by Mukite Musangi & Co. Advocates

For Respondent Mr. Karanja Mbugua instructed by Karanja-Mbugua & Co. Advocates

Court assistant Nixon