

REPUBLIC OF KENYA
INDUSTRIAL COURT OF KENYA

AT NAIROBI?

CAUSE NO. 1507 OF 2010

ERIC MUKUMBO.....CLAIMANT

VERSUS

RICHARD KINUTHIA KAMAU.....RESPONDENT

JUDGMENT

1. The Claimant herein filed suit on 7th December 2010 seeking various reliefs from the Respondent who was at all material times the employer of the Claimant for Kshs. 41,040/- out of a total debt of Kshs. 51,040/-. A sum of Kshs. 10,000/- had been paid by Mpesa in September 2010.
2. In his defence, the Respondent denied being indebted to the Claimant to the tune of Kshs. 41,040/-. He averred that he had paid the entire debt partly through Mpesa and in cash.
3. On 16th June 2010, the matter proceeded before the former Tribunal (Chemuttut J. presiding) and the coram indicates that the Claimant was present and was represented by Counsel a Mr. P. N. Waweru while the Respondent Mr. Richard Kamau Kinuthia was present in person. The Claimant was a research assistant and the Respondent testified that the Claimant worked for him between October 2009 and 15th July 2010. He was to receive payment per page and an additional payment of 100,000/-. At the time the Claimant stopped working he was owed Kshs. 47,400/- according to the Respondent. The Respondent testified that he promised the Claimant on 1st September 2010 that he would pay 10,000/- on the 5th and 20th of each month until settlement in full. He testified that he paid the Claimant a sum of Kshs. 10,000/- on 14th September 2010 via Mpesa and another 10,000/- cash payment on 25th September 2010, outside Jumbo Supermarket; a cash payment of Kshs. 10,000/- on 1st October 2010; another cash payment of Kshs. 17,400/- and a final cash payment of 10,000/- on 12th October 2010.
4. Mr. Eric Mukumbo the Claimant stated that after payment of 14th September 2010 he never saw the Respondent until he sued the Respondent. Counsel for the Claimant Mr. Waweru submitted that the Claimant was still owed Kshs. 41,040/-.
5. The claim by the Claimant was one in which there was an oral contract of employment. The parties were in agreement that there was a contract but they differ on whether the dues were paid. The Claimant claims he is owed Kshs. 41,040/- while the Respondent avers he paid the Claimant a total of Kshs. 57,400/- which was settled partly through Mpesa and cash payments.
6. In his pleadings, the Claimant averred that the Respondent paid him Kshs. 10,000/- around 25th September 2010 via Mpesa. The Claimant in his testimony stated that he was paid on 14th September 2010. It is clear that the Claimant and Respondent differ on the payments but it seems the Claimant does not have an accurate recollection of the transactions. He did not back up his pleadings with his testimony. The sums he received were on at least 2 occasions if he is to be believed. There was payment in early September and late September according to his testimony and pleadings. If he was owed 47,400/- why would the Respondent claim that he paid the Claimant Kshs. 57,400/- through the various modes of payment? If indeed there was a settlement

of the figures due why didn't the Respondent make arrangements to pay the Claimant and record the payments?

7. As I did not hear and see the witnesses, I cannot determine the demeanour of the witnesses or assess their character. It is plain however that the Respondent was not honest in saying he had paid Kshs. 57,400/- against an admitted debt of Kshs. 47,400/- it makes no sense to overpay especially if the financial situation was as bad as stated by the Respondent.
8. Finally, on behalf of the Judiciary I apologise for the delay in rendering a verdict as the former Court took inordinately long to finalise the cause and when I took over I attempted to resolve the matter by summoning parties who did not initially attend Court until the second summons were issued.
9. On the basis of the pleadings and testimony adduced I find that on a balance of probability there was a debt due. If the Claimant received 2 installments, then he was entitled to payment of Kshs. 27,400/- as balance of the debt that was admitted. There is no proof of the payments allegedly made in cash. The Respondent and Claimant are in agreement there was payment on 14th September 2010 and payment by Mpesa. These 2 payments therefore account for Kshs. 20,000/- out of the total debt. In the premises I would enter judgment for the Claimant against the Respondent for Kshs. 27,400/- which is the balance of the debt due. I would assess the costs as Kshs. 5,000/- in the matter which was concluded fairly quickly. The reason I have assessed costs is that the dispute took place in the era of the Industrial Court tribunal and the costs as would be assessed now would be at variance as this is the High Court.

Orders accordingly.

Dated and delivered at Nairobi this 3rd day of February 2014

Nzioki wa Makau

JUDGE