

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 1578 OF 2012

REUBEN MUCHOKI MWANGI.....CLAIMANT

VERSUS

SAMUEL WAWERU KARIUKI.....RESPONDENT

JUDGMENT

1. The Claimant filed his suit against the Respondent on 6th September 2012 seeking to resolve an issue he framed as unlawful termination of employment and wrongful dismissal without notice. He averred that he was employed on 1st January 2007 as a caretaker at all material times underpaid the Claimant by giving a monthly payment of Kshs. 1,500/-. He claimed Kshs. 7,500/- per month from January 2007 to 30th July 2012 being salary arrears, unpaid leave for 6 years Kshs. 54,000/-, severance/gratuity calculated at rate of 18 days for each year of service Kshs. 54,126/-, unpaid public Saturday and Sundays holidays, Kshs. 54,000/- overtime Kshs. 17,856, unpaid salary for August Kshs. 9,000/-, salary in lieu of notice Kshs. 9,000/- service pay for 6 years worked Kshs. 27,000/-, compensation for loss of income and trauma Kshs. 54,000/-, loss of personal items valued at 89,500/-, interest and costs of the suit as well as any other or further relief this Honourable Court may deem fit to grant.
2. The Respondent filed a Memorandum of Reply on 29th May 2013 and averred that the Claimant was not his employee. He denied owing the sum of Kshs. 1,393,400/- and that the documents relied on by the Claimant were stolen by the Claimant from the Respondent's premises. He averred that the Claimant was a tenant who constantly refused and was unable to pay accruing rents culminating in his eviction from the premises.
3. The Claimant testified on 7th May 2014 that he was employed in 2007 by the Respondent as a caretaker of the Respondent's premises. The salary was agreed at Kshs. 4,500/- and accommodation was provided. He testified he was not paid as agreed and got 1,500/- instead. He testified that he demanded payment through a lawyer and the police were involved by the Respondent and the documents taken from the lawyer. The Respondent evicted the Claimant on 25th June alleging the non-payment of rent. The Claimant accused the Respondent of using influence at the police station to have the matter declared a civil case.
4. In cross-examination by Mr. Onyango for the Respondent the Claimant testified that in his letters to the Respondent he did not ask for any money even in his letter of 15th June 2009 which is his resignation letter. He left the Respondent's premises in August 2012. He testified that the lawyer involved was O. N. Ojwang who was the advocate for both parties. The Claimant testified that he was a caretaker but conceded that he signed some documents as caretaker and others as witness. He confirmed that he did not avail a document from Safaricom showing that he had received the payment he alleged to have received via Mpesa.
5. The Respondent testified. He stated that he is a businessman and knows the Claimant who was a parent at Uhuru Secondary where the Respondent was a parent and board member. He testified that his son and the Claimant's son were classmates and that the Claimant sought help from the Respondent since the Claimant had no residence and the Respondent gave him a room at 3,000/- a

- month. He testified that the Claimant managed to pay rent and after 6 months the Claimant had trouble paying rent. The Respondent let the Claimant stay on and the reason he let the Claimant stay was that the Claimant's wife was a congregant in the Respondent's church. He denied engaging the Claimant as a caretaker. He testified that his wife was a housewife and collected rents from the premises. He also testified that his office was broken into and document stolen and he reported the matter to the police and the documents were retrieved from the offices of his lawyer O. N. Ojwang now deceased. He denied that the Claimant received payments on his behalf.
6. In cross examination by the Claimant the Respondent testified that the documents exhibited by the Claimant were stolen in July 2012 and if anyone communicated with the Claimant that was wrong as the Claimant was not the landlord nor was he a caretaker. He denied pressuring the Claimant using the police.
 7. The Claimant filed written submissions on 27th May 2014 and the Respondent filed Submissions on 16th June 2014. In the respective submissions parties reiterated their positions. The Claimant submitted that he produced diary notes of the collections he made for rent as well as receipts. He submitted that the claim that he had only paid 6 months rent and no more were without basis as no tenancy agreement was availed nor were any documents produced to prove that. The Respondent in his submissions stated that the claim was not proved as the documents relied on were stolen from the premises of the Respondent and altered.
 8. It is clear that in any claim for resolution of disputes in regard to employment there ought to be proof on a balance of probabilities. The Claimant did not deny that some of the documents in the claim were obtained from the lawyer who was the Respondent's lawyer and that this fact was recorded at Buru Buru police station. In his pleadings there was a series of letters he attached to the Claim and in these letters the Claimant did not make any demands from the Respondent. In the case he seeks gratuity, service and a host of reliefs but failed to prove that he was an employee of the Respondent. He purportedly resigned in 2009 and continued to stay on the premises until 2012. If indeed he was an employee any reliefs that the Court would grant cannot be in excess of the period he enjoyed free accommodation. I find that he did not prove any of the claims and this suit is fit for dismissal. I will however not make any order as to costs.

Orders accordingly.

Dated and delivered at Nairobi this **14th** day of **July** 2014

Nzioki wa Makau

JUDGE