



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT KISUMU

CAUSE NO. 47 OF 2014

(Before Hon. Justice Hellen S. Wasilwa on 18th November, 2014)

SAMWEL MIYOGO OTISO.....CLAIMANT

-VERSUS-

SAUTI YA REHEMA (SAYARE) RADIO & TELEVISION NETWORK.....RESPONDENTS

JUDGMENT

The claimant herein Samwel Miyogo Otiso filed his plaint On 7.3.2014 through the firm of Moracha & Co. Advocates. The claim was served on the respondents who filed their defence on 4.4.2014 through the firm of E. C. Rotich & Co. Advocates. The matter was then fixed for hearing on 21.10.2014. The respondents were served on 17.9.2014 as envisaged from the affidavit of service filed in court on 21.10.2014. On this day the respondents nor their counsel appeared. The court directed that hearing proceeds *ex parte*.

The claimant's case is that he was employed by the respondents as a journalist at respondents Kisii office. Claimant was employed in August 2012. Before then, the claimant was on attachment from February 2009 to May 2009 at the respondents Kisii office. He was later employed by respondents at a salary of Kshs 10,000/= per month. He was however not paid promptly. The claimant exhibited his attachment letter, identity card, press identification card and daily attendance register as proof that he worked for respondents. His duties were to record news, running the continuity programme, adverts and reporting news. He also did the receptionists work when the receptionist was away. The claimant claim is for payment of his salary to-date as from August 2012. He also seeks for damages.

In the defence filed by the respondents, they had stated that the claimant was not their employee at all but was a volunteer. There is no evidence that he was a volunteer but there is evidence that he was in respondents premises way past his attachment period in December 2012. If that was his position, then the respondents owed him a duty to give him a letter as a volunteer.

I find that from the evidence produced by the claimant, he worked or served the respondents in some capacity. It is the respondents who failed to give him an appointment letter. Under S. 9(2) of the Employment Act:-

“(2) An employer who is a party to a written contract of service shall be responsible for causing the contract to be drawn up stating particulars of employment and that the contract is

consented to by the employee in accordance with subsection (3)".

It was the respondents who failed to give the letter indicating in what position the claimant served. Under S. 10(1) of Employment Act 2007:-

“(1) A written contract of service specified in section 9 shall state particulars of employment which may, subject to subsection (3), be given in instalments and shall be given not later than two months after the beginning of the employment”.

The burden therefore of proving or disproving an alleged terms of employment contract falls on respondents.

It is therefore this court's finding that the claimant has established his case. I do find for the claimant and award him as follows:-

1. Salary from August 2012 to March, 2013

= 8 X 10,000 = Kshs 80,000/=

2. Prorated salary as terminal benefits for the period worked of 8 months = Kshs 8,000/=

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TOTAL = KSHS 88,000.00/=

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The respondents shall meet costs of this suit.

HELLEN S. WASILWA

JUDGE

18/11/2014

Appearances:-

Claimant present

N/A for Respondents

CC. Wamache