



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 786 of 2010

**KENYA UNION OF EMPLOYEES OF VOLUNTARY AND
CHARITABLE ORGANIZATIONS CLAIMANT**

-VERSUS-

SUDAN CATHOLIC BISHOPS REGIONAL CONFERENCE.....RESPONDENT

AWARD

The Claimant herein Kenya Union of Employees of Voluntary and Charitable Organizations has filed a dispute against the Respondent Sudan Catholic Bishops Conference claiming intimidation and wrongful termination of Mr. Anthony Omarana Esile.

The Respondent did not file any reply and never appeared in Court either for mention or hearing in spite of service having been effected by the Claimant and affidavits of service filed in Court.

The Claimant alleges in the Memorandum of Claim that the Respondent employed the Grievant for the first time by contract dated 10th August 2006 as a driver/mechanic. The contract term was 105 days effective from 11th August 2006 to 11th December 2006. The contract was subject to the laws of Kenya. Upon expiry of the 1st contract the Grievant signed another contract for 12 months from 3rd January 2007 to 2nd January 2008. The 2nd contract was subject to terms and conditions of service contained in the Caritas Yei (SCBRC) Human Resource Manual (as amended from time to time), the Employment Act and other applicable provisions of the laws of Sudan. His work station as per the contract was Catholic Diocese of Yei and he was accountable to the Director, Caritas Yei.

The contract expired on 2nd January 2008 but the Grievant continued to work until 7th March 2008 when he received a letter of termination of contract. He was offered 1 months' salary and USD 100 for transport back to Kenya. The Claimant prays for orders as follows:-

(a) **THAT**, the Honourable Court finds that, the accusations (a), (b), (c) and (d) leveled against the Grievant in **APPENDIC "E"** be **DECLARED INVALID, NUL AND VOID** and find that the Grievant had suffered **AN UNFAIR AND A WRONGFUL SERVICE TERMINATION**.

(b) **THAT**, the Honourable Court order the Respondent to pay the Grievant all terminal dues in USD as follows:-

i. Salary for February and 7 days worked in March, 2008

| | | | |
|------|-----------------------------------------------------|---|---------------------|
| | at the rate of USD 286 per month. | - | USD.353.00 |
| ii. | 52.5 days Annual and prorated leave earned | | |
| | at the rate of USD 286 per month. | - | USD.499.00 |
| iii. | Work permit renewal personal expenses | - | USD. 62.00 |
| iv. | Adequate cost for travelling back to Kenya, USD 150 | | |
| | less USD 100 paid on departure – balance claimed - | | USD. 50.00 |
| v. | One (1) month salary in lieu of notice at USD | | |
| | 286 per month. | - | <u>USD286.00</u> |
| | SUB TOTAL:- | - | USD.1,250.00 |
| vi. | 12 months maximum compensation at the | | |
| | rate of USD 286 per month USD | - | <u>USD.3,432.00</u> |
| | GRAND TOTAL:- | - | USD.4,682.00 |

The case came up for hearing on 27th November 2012 when the Claimant was represented by Odin Boaz Otieno Janitor, the Secretary General of the Claimant Union and there was no appearance by the Respondent. Mr. Otieno relied entirely on his Memorandum of Claim and Appendices filed with the same.

From the particulars contained in the Memorandum of Claim and the Appendices, it is clear that the 1st contract was entered into in Kenya and subject to Kenyan law but to be performed partly in Kenya and partly in the Sudan. When this contract expired, the Grievant was offered a second contract which was signed and performed in entirety in the Sudan. The contract expressly provides that it is subject to the laws of Sudan.

This Court has no jurisdiction to hear and determine cases which are entered into in Sudan and subject to the laws of Sudan. The case is therefore dismissed for want of jurisdiction.

Orders accordingly.

Read in an open Court and signed on this 19th day of February 2013.

HON. LADY JUSTICE MAUREEN ONYANGO
JUDGE.

In the presence of: _____ Claimant
 _____ Respondent