



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**

**CAUSE NO.1292 OF 2010**

RICHARD N. ONYONYI.....CLAIMANT

VS

DHL EXCESS SUPPLY CHAIN (K) LTD.....RESPONDENT

Mr. Wandati for Claimant

Mrs. Guserwa for Respondent

**AWARD**

The Claimant seeks payment of Kshs.9,243,136/= by the Respondent being unpaid salary for 28 months worked by the Claimant in the position of workshop manager.

The parties consented to rely on the pleadings together with the annexures thereof and written submissions and dispensed with oral evidence.

In his statement of claim dated 21<sup>st</sup> October, 2010 and filed on 25<sup>th</sup> October 2010 the Claimant states that he was employed as a fleet manager with effect from 10<sup>th</sup> December, 2007. The letter of offer, which he duly accepted is annexed to the Statement of Claim as Annex 'A'.

In terms thereof, his consolidated basic salary was Kshs.250,000/= and a car allowance of Kshs.80,000/= per month subject to applicable statutory deductions.

He was eligible to join the staff medical scheme immediately and was to join the Company Pension Scheme upon successful completion of probation.

His position was graded at 'RCS J' Grade in terms of the Respondent's grading system.

On or about January 2008, the workshop manager then one Mr. Steve Andrade resigned from the employ of the Respondent. The Respondent requested the claimant to undertake the duties of the Workshop Manager in addition to the duties he was already undertaking as the Fleet Manager. He assumed the extra duties from February 2008.

The Respondent in its Memorandum of Reply dated 9<sup>th</sup> November, 2010 denies that it instructed the Claimant to undertake extra duties of a Workshop Manager and insists that the claimant was employed as Fleet Manager and worked only in that capacity.

It is not in dispute that the Claimant wrote a letter of resignation dated 12<sup>th</sup> May, 2010. That he

gave three months' notice in the said letter. The reason for his resignation was failure by the Respondent to remunerate him for the duties of Workshop Manager, which he alleged he had performed for the last 28 months. He alleges that the salary for a workshop manager at the time was Kshs.330,112/= per month and he was entitled to payment of the said sum for the 28 months he had served in that capacity. He, therefore claims the full amount calculated at Kshs.9,243,136/= and in the alternative the difference between the salary he was paid and that of the Workshop Manager.

According to the letter of appointment, other management terms and conditions of the Claimant's job was to be explained in a separate document which would be availed to him later. This letter did not, therefore stipulate his core responsibilities as a fleet manager.

The responsibilities were however, outlined in the Advertisement for the position, annexed and marked 'A' pg.1 to the Memorandum of Claim. These included;

- (i) Provision of top quality road transport services to clients with a fleet of over 60 vehicles and their associated operations such as fuel and technical services;
- (ii) Recruitment, management and development of drivers and fleet team;
- (iii) Management of fleet operations;
- (iv) Budget/cost management;
- (v) Compliance with company rules and regulations and applicable laws;
- (vi) Ensuring effective internal and external communication; and
- (vii) Continuous improvement of operations.

The Management terms and conditions of the fleet manager were presented as part of Annexure 'A' page 7. Their effective date was 1<sup>st</sup> December, 2007 and was signed by the Claimant and the Business Director of the Respondent on 15<sup>th</sup> September 2008 provides;

*"promotion from one grade to another must be in writing and must show the title and responsibilities assigned to the new grade".*

Clause 32 thereof is a grievance procedure by which grievances arising between the Company and employees individually or collectively may be resolved rapidly and effectively.

This entails;

1st stage where a grievance is raised with immediate supervisor in writing;

If the matter is not resolved within two weeks it is handled by respective line manager and the Business Group Manager and if it is not resolved, the 3<sup>rd</sup> stage entails *'a meeting between the relevant Human Resources Manager, the Business Manager and the employee'*.

The claimant has presented emails marked annex 'B' pages 20 – 24, wherein the Claimant presented his grievance to various officers including

Mr. Albert Onyango, Business Group Manager – Transport Services, what he perceived to be continued underpayment with respect to the extra responsibilities he shouldered since the workshop manager departed in January 2008. He had indicated that he had withheld his signature to the Role profile for his job as a fleet manager pending its re-evaluation to include the added responsibilities additional remuneration.

The various emails appear not to have been responded to and are dated 3<sup>rd</sup> November 2008; 7<sup>th</sup> January 2009; 6<sup>th</sup> March 2009; and 8<sup>th</sup> January, 2010.

The Respondent does not allude to these correspondences in its Memorandum of Reply and makes a bare denial that the claimant was never given any additional duties and was therefore and not entitled to any additional remuneration.

From the evidence presented by the Claimant himself and the Respondent, it is clear that on 15<sup>th</sup> September, 2008 the claimant signed his terms and conditions of service effective 1<sup>st</sup> December 2007. This was pursuant to the provision in his letter of appointment signed on 10<sup>th</sup> December 2007 referred to earlier.

There is no evidence placed before the court whatsoever by the Claimant to demonstrate that he performed any work over and above that of a fleet manager. His own documents, duly signed by him, show that any additional responsibilities had to be done in writing. In spite of the protestations in the emails referred to, he proceeded to sign the terms and conditions of service attributable to his job.

In certain cases, a contract may be varied in writing or orally. Where there is alleged to be oral variation of the terms of a contract evidence must be led to that effect.

The employment contract is specific that any variation to it with respect to the core terms and conditions must be done in writing. No documentary evidence has been presented to court to show that the terms and conditions of employment of the Claimant were changed.

The Claimant did not testify in this matter and therefore there is no oral evidence regarding the alleged changes to the terms of employment. The attached emails which tend to show that the Claimant had a grievance regarding the responsibilities bestowed upon him from February 2008, do not suffice for the court to find that the responsibilities of the Claimant with regard to his work as a fleet manager had changed.

Accordingly, the court finds that the Claimant has failed to prove on a balance of probabilities that his contract of employment had changed to include extra responsibilities from February 2008, until the date of his resignation on 12<sup>th</sup> May, 2010.

In the circumstances the court has no option but to decline the invitation to award the claimant extra remuneration for 28 months in arrears which remuneration is undocumented in any correspondence before court.

The entire suit is accordingly dismissed with no order as to costs.

**It is so ordered.**

**Dated and Delivered** at Nairobi this 12<sup>th</sup> day of July, 2013.

Mathews N. Nduma

**Principal Judge – Industrial Court**