



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 2394 OF 2012

VETRINARES SANS FRONTIERS, BELGIUM CLAIMANT

VERSUS

ALICE EREMON EMATHE RESPONDENT

JUDGEMENT

1. On 27th November 2012, the claimant, Vetrinares Sans Frontiers, Belgium (VSF) filed this claim for the payment of Kshs.535, 300/= against the respondent, Alice Eremon Emathe. On 2nd April 2013 the respondent filed her defence and admitted receiving the sum of Kshs.2, 228,642.05 but handed over the same to Kepha Matioli Indagasi, the claimant's project manager and hence denies owing any money as claimed. After the hearing both parties agreed to file their written submissions, only the claimant filed their written submissions on 1st October 2013.

2. In the claim, the claimant states that the respondent was their employee by a contract dated 1st January 2010 as the Logistics Officer. That the claimant gave the respondent a work advance of Kshs.2, 228,642.05, she accounted for Kshs.1, 693,342.05 leaving a balance of Kshs.535, 300/=. On 25th August 2010 the parties herein wrote an agreement where the respondent admitted owing the claimant the sum of Kshs.535, 300/= and agreed to repay the same by the end of September 2010 but failed to do so. This suit is with regard to the unpaid amounts.

3. In evidence the claimant called Hilda Arigi their officer. In her sworn evidence, Hilda stated that she worked closely with the claimant before her termination with the claimant where the respondent had been the logistics Officer dealing with transport and was also the claimant's bank agent and thus authorized to collect money from the bank on behalf of the claimant. On 4th September 2009, the respondent withdrew Kshs.2, 228,642.05 from the bank for purposes of project activities. This money had to be accounted for. The respondent did not fully account for the money received from the bank. There is a bank statement to support the withdrawal of the money by the respondent. The owing balance was kshs.545, 300/= and Kshs.10, 000/= was deducted from the claimant's pay and there remains a balance of kshs.535.300/= that is unpaid. That the parties had an agreement where the respondent admitted owing the claimant, there were witnesses but failed to pay as admitted. Soon after that, the respondent left the employment of the claimant and there was no way the claimant could recover the money.

3. The respondent was not forced to sign the agreement admitting owing the claimant money. At the signing of the agreement, the respondent called a fellow employee of her choice who was present as a witness and hence no force was used. On 27th December 2012, the respondent wrote an email on the non-payment of the amounts owed to the claimant noting that she was jobless and needed more time to be able to repay the same. After the respondent was issued with a notice to show cause as to why disciplinary action could not be taken against her due to the non-payment of the money owed to the claimant, there

was termination of employment. The respondent was to instruct the management of the provident fund in her favour to give her contributions to the claimant but this payment by Jubilee Insurance has not been paid. The claimant thus claim is for Kshs.535, 300/= that stands unpaid to date.

4. In defence, the respondent stated that she received Kshs.2, 228,642.05 vide a cheque from the claimant being money meant for field activities in Pokot and Turkana. That she handed over these monies to Kepha Matioli Indagasi as the project manager. That when the project manager was not able to account for the money, the respondent together with Kepha Matioli Indagasi and Nicholas Maiyo were suspended from work pending investigations. On 24th August 2010, the respondent was called by Catherine Injairu the claimant's human resource manager and on 25th August 2010 an agreement was written where the respondent was said to have misappropriated the claimant's funds and that the respondent was informed to write this agreement admitting liability to save her from criminal proceedings and be offered a new contract. That the respondent thus signed the agreement sorely to avoid criminal prosecution and not out of her own free will and thus deny the claim.

4. In evidence, the respondent gave her sworn evidence that she is a resident of Lodwar and when she joined the claimant in 2009 she was the Administrative officer and was promoted through the ranks to the Logistics Officer. The project manager, Kepha Indagasi raised an advance to fund activities for Kshs.2, 228,642.05. The respondent got the cash from the bank and gave this amount to the project manager and he signed the cash disbursement vouchers which are held by the claimant. The project manager did not raise any questions as to the amount of money received from the respondent and thus the respondent was shocked when she was accused of misappropriation of the money in August 2010. She was suspended. On 25th August 2010, the respondent was made to sign an agreement admitting owing the claimant money and then on 27th August 2010, the respondent was terminated from her employment.

5. The respondent further stated that Nicholas Maiyo was the project accountant who booked all expenses and he did everything he was supposed to do on the project but was also terminated just like the respondent was as well as Kepha Indagasi. That the respondent admitted to pay the missing money on the basis of the fact that she was the one in charge of the cash. However she denied having the cash as the same was handed over to the project manager.

6. In cross-examination, the respondent admitted that she had accepted to pay the claimant their money as she was the person responsible for the same but that she has no job to enable her repay this money.

7. In submissions, the claimant stated it is not in dispute that the respondent received Kshs.2,228,642.05 and was not able to account for Kshs.535,300/= and on 25th August 2010, the respondent executed an agreement admitting owing the amounts and promising to repay the same but failed to do so. That despite the claimant admitting owing the claimant, she stated that once she received the amount, the same was handed over to the project manager but this was never stated before. The claimant relied on the case of *Alfred Nephath Mwaniki versus Barclays Bank [2005] eKLR* where the plaintiff had denied signing a letter voluntarily but the court in noting the circumstances of the same held that the same had been signed without coercion and hence voluntarily.

8. The claim herein arose within an employer and employee relationship where the respondent was the Logistics Officer in the employment of the claimant. In the course of work, the respondent as the claimant's bank agent received funds, which funds, while taking accounts, fell short of the received amount.

9. The receipt by the respondent of Kshs.2, 228,642.05 is not in dispute. The respondent admits to have received this amount in the course of her work as the logistics officer for the claimant. What she disputes is that she handed over this money to the project manager Kepha Indagasi and the accounts were done by Nicholas Maiyo and together, they were all terminated from the employment of the respondent. However, when the claimant received summons herein, she opted to defend the claim alone and has not enjoined the two others as equally responsible for the claimed amount.

10. In evidence the respondent while under oath admitted to owing the claimant the amount of Kshs.535,300.00 and noted that she was unable to repay this amount since she was jobless. That further she had admitted to owing these monies to avoid criminal prosecution and to secure a new contract with the claimant.

11. The claim herein is of a civil nature, where a party admits to owing then that should remain secured and if there are other issues, then the party so introducing such new issues has the duty to advance and seek to prove such issues. In this regard, the claimant's claim is clear to the extent that they lost Kshs.535,300.00 while in the possession of the respondent. The respondent has admitted owing this much. This claim must therefore be confirmed.

12. On the new issues of the admission and the agreement as between the parties not being voluntary, the duty was on the respondent to take the court through such evidence. This was not done. There is therefore nothing to direct the court in this respect and must therefore fail. On the other hand, the respondent placed blame on her co-workers, the project manager Kepha Indagasi and Accountant, Nicholas Maiyo. However, these two persons are not party to this suit, if the respondent felt blame was on these two persons, the duty rested upon her to enjoin them in this claim. This was not done and the claim remains against the respondent alone.

13. This claim has been due and owing against the respondent. Once there was admission, the respondent failed to repay or indicate how she was going to offset this amount however small. Costs have been incurred as a result. This will be met by the respondent.

In conclusion, judgment is hereby entered for the claimant as against the respondent in the following terms;

- a. **The respondent to pay the claimant the sum of kshs.535,300.00; and**
- b. **Costs of the suit to the claimant.**

Delivered at Nairobi and dated this 17th day of December 2013.

MBARU

JUDGE

In the presence of:

Lillian Njenga – court assistant

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