



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 1872 of 2011

SETH NAMUNYANYI MAHIGA.....CLAIMANT

VERSUS

DS MAX FOUNDATION.....RESPONDENT

JUDGMENT

1. This is the judgment in the amazing case of alleged employment relationship between the claimant Seth Namunyanyi Mahiga against DS Max Foundation, the respondent.
2. The claimant filed the memorandum of claim on 8.11.2011 in person. He alleged that on 3.01.2011, he applied for a job in sales and marketing and the respondent invited him for interview which he passed and the respondent offered him the job whose title was sales and marketing. A photocopy of the application letter dated 3.01.2011 marked appendix 1 was attached to the memorandum of claim as annex 1. It read as follows:

“SETH NAMUNYANYI MAHIGA

P.O. BOX 7686-00300

NAIROBI, KENYA

0724686542

3RD JANUARY 2011

THE HUMAN RESOURCE MANAGER,

DS Max Foundation,

P.O. BOX 70117-00400,

NAIROBI.

Dear Sir/Madam

REF: APPLICATIN FOR A JOB AS A SALES

AND MARKETING AGENT

I am a male Kenyan citizen aged 31 years. I hereby kindly apply for a job as above.

I completed my secondary education and proceeded to pursue a Diploma in Nutrition and Health. I have enough experience having worked in different organisations which include, Swara Restaurant, Kleansley and Hygiene Plus and Healthy U 2000 Ltd.

I am kind, polite and hardworking and promise to work more harder if offered the job. Attached please find a copy of my curriculum vitae.

Looking forward to giving my kind request, the best of your consideration.

Yours faithfully,

Signed

SETH N. MAHIGA”

3. The claimant pleaded that as per the letter of employment annex 2 on the memorandum of claim dated 3.02.2011, the respondent engaged the claimant to a job titled Sales and Marketing. The claimant attached his curriculum vitae on the memorandum of claim as annex 3. The curriculum vitae does not show where the claimant served from “**3.02.2011 to date.**”

4. The claimant further pleaded that on 4.10.2011, the respondent’s founder and managing director who is also the President of the World Youth Parliament His Excellency Gerishom Okonda wrote a letter to introduce the claimant with reference to purchase of Christian books by Jesus is Alive Ministries, Bishop Hon. Margaret Wanjiru’s church and who is also the Member of Parliament for Starehe Constituency and the founder of Jesus is Alive Ministries. The letter of introduction was attached on the memorandum of claim marked annex 4. The claimant further stated that by a letter dated 7.10.2011, being annex 5 on the memorandum of claim, the respondent unfairly terminated the claimant’s contract of employment. That following the termination the claimant reported a dispute to the Ministry of Labour at Nyayo House in Nairobi but the respondent failed to attend the meetings as summoned. Thus the claimant filed this cause praying for judgement against the respondent for:

a. terminal dues amounting to Ksh. 673,425.00;

b. compensation for wrongful dismissal to a maximum of 12 months’ salary under the jurisdiction of the Honourable court;

c. costs of the suit

d. interest on (a) and (b) above;

e. any other relief as the Honourable court may deem just.

5. The respondent filed the defence to the claimant’s memorandum of claim on 27.01.2012. The respondent stated that the claimant met its Founder for the first time by 25.09.2011 when the claimant went to the respondent’s office to apply for a job. Further, the respondent pleaded that the employment letter relied on by the claimant was fraudulent and the signature appended on the said letter was a forgery. The respondent therefore prayed that the claimant’s suit be dismissed with costs.

6. This case came up for hearing on 12.10.2012. The claimant gave evidence to support his case. The respondent’s Founder who is also the President of the World Youth Parliament His Excellency Gerishom Okonda gave evidence to support the respondent’s case.

7. Having carefully considered the evidence on record, the court makes the following findings:

a. The alleged letter of employment produced as exhibit C2 by the claimant is not on the respondent’s original letter head and the signature of the respondent thereon is not original and the court finds that as

testified by the respondent's witness, the letter is a forgery or cannot be a credible basis for the alleged contract between the parties.

b. The termination letter produced by the claimant marked exhibit C1 is not on the respondent's original letter head and does not bear the original signature of the respondent's witness and as submitted by the respondent, the court finds that the letter is also a forgery.

c. Due to unexplained reasons, the claimant produced as exhibit C3 the original introductory letter addressed to the Hon. Bishop Margaret Wanjiru contrary to the expectation and the claimant's evidence that the letter had been delivered.

d. The claimant produced his curriculum vitae as exhibit C6 which showed that from August 2008 to April 2011 he was working with Healthy U 2000 LTD (Nakumatt Mega, Nakumatt Lifestyle and Nakumatt Karen Branch) and the court finds that it is an obvious lie that the claimant could have been an employee of the respondent as alleged.

e. The claimant produced marked exhibit C 7 (a) to (c) alleged pay slips for the months of March, April and May 2011 and which the claimant had endorsed his signature thereon contrary to the usual practice whereby an employee does not sign on a pay slip. Further, the claimant did not produce the would be pay slips for February, June, July, August and September 2011 being months which he would have been expected to have worked for the respondent because he alleged to have been dismissed on 7.10.2011.

8. In view of the evidence on record, the court finds that the claimant Seth Namunyanyi Mahiga was not an employee of the respondent DS Max Foundation as there was no contract of employment between the parties.

9. In conclusion, judgement is entered for the respondent against the claimant for:

a. dismissal of the claimant's claim;

b. the claimant to pay the costs of the cause; and

c. the respondent may prefer appropriate criminal complaint and action against the claimant in view of the findings of the court in this judgment.

Delivered in court at Nairobi on 2nd November, 2012

Byram Ongaya
JUDGE