



**Nguna v Hoggers Limited (Employment and Labour Relations Cause
2457 of 2016) [2023] KEELRC 2688 (KLR) (27 October 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2688 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 2457 OF 2016
AN MWAURE, J
OCTOBER 27, 2023**

BETWEEN

JOHN NGUNA CLAIMANT

AND

HOGGERS LIMITED RESPONDENT

JUDGMENT

Introduction

1. The Claimant filed a Memorandum of Claim dated 24th November 2016.

Claimant's Case

2. The Claimant was employed by the Respondent as a motorcycle delivery rider on 1/04/2000.
3. The Claimant avers that he was employed to take food deliveries to the Respondent's customers and owing to the physical posture on the motorbike over the years he developed a back-illness condition.
4. The Claimant avers that his condition grew in the course of time and became painful and uncomfortable and he could not work, walk or sleep in comfort.
5. The Claimant avers that it was agreed between the Respondent and himself that he retires on medical grounds and the Respondent would compensate him for the illness and pay his terminal benefits.
6. The Claimant avers that he gave notice of retirement on 11/3/2016 which took effect on 11/4/2016. However, the Respondent refused to pay his terminal benefits and compensation.
7. The Claimant avers that he is entitled to compensation as of right even if it had not been agreed with the Respondent.



8. The Claimant avers that the Respondent has refused to respond to his queries and /or his advocates correspondences.

Respondent's Case

9. In opposition to the claim, the Respondent filed its memorandum in response dated 20th February 2017. He however did not tender evidence in court and did not file submissions.
10. The Respondent avers that the Claimant was employed as a delivery rider at Debonairs, Muindu Mbingu Street earning a gross salary of Kshs 17,000 inclusive allowances.
11. The Respondent avers that the Claimant voluntarily submitted his notice of retirement on medical grounds on 11th March 2016.
12. The Respondent avers that on retirement the Claimant demanded a send off package whereby the Respondent parted with 4 months salary and in addition paid the Claimant terminal dues for the days worked in April, leave days and public holidays worked.
13. The Respondent avers that the Claimant signed a discharge/ indemnity voucher once he received the payment in full and final settlement of all dues owed by the Respondent.
14. The Respondent avers that the Claimant's illness was not as a result of his occupation as the medical report did not reveal any such condition.
15. The Respondent avers that it was the Claimant's decision to retire on medical grounds and the Claimant is not entitled to severance pay as he left employment voluntarily and he was a member of NSSF and NHIF which the Respondent paid fully.

Claimant submissions

16. The claimant's submissions dated 2nd May 2023 were considered by the court.

Analysis and Determination

17. The main issue for determination is whether the Claimant's retirement on medical grounds was lawful and fair and whether the Claimant is entitled to the reliefs sought.
18. The Claimant submitted that it was mutually agreed that he retires on medical grounds, however, he produced in court a notice of retirement drafted by himself and addressed to the Respondent informing the Respondent of his intention to retire. This is his letter dated 11th March 2016. This shows he voluntarily retired however there is no link shown that his retirement was instigated by the Respondent or that there was an agreement that the claimant was to be compensated by the respondent upon retirement.
19. Further, upon perusal of medical report from Avenue Healthcare filed by the Respondent there is no express diagnosis of the specific condition as it seems he has been unwell severally and, on all occasions, he was treated and given medication. Therefore, the Claimant's assertions that he got sick due to the work he was doing do not seem to hold water.
20. In opposition to the claim, the Respondent averred that the Claimant signed a discharge/ indemnity voucher once he received the payment in full and final settlement of all dues owed and produced the discharge voucher as one of its documents. The same is dated 10th June 2016. In [*Ephraim Gaithe*](#)



Gitbongori v Timaflor Limited [2018] eKLR Hon Justice Nzioki wa Makau held the following on discharge vouchers: -

“I have considered the rival arguments, the pleadings and the case law cited as well as the law. In this case, the Claimant, a HR practitioner to boot, signed a discharge voucher whose terms and effect were a waiver of all claims against the Respondent. The Court of Appeal (Visram, Karanja, Koome JJA) in the decision in *Coastal Bottlers Limited v Kimathi Mithika* [2018] eKLR which overturned the reasoning in *Jane Njeri Wanyoike & 23 Others v Pan Africa Insurance Company Limited & 2 Others* (supra), held as follows:-

‘In our minds, it is clear that the parties had agreed that payment of the amount stated in the settlement agreement would absolve the appellant from any further claims under the contract of employment and even in relation to the respondent’s termination. It is instructive to note that the respondent never denied signing the said agreement or questioned the veracity of the agreement. Further, from the record, we do not discern any misrepresentation on the import of the said agreement or incapacity on the respondent’s part at the time he executed the same. It did not matter that the amount thereunder would be deemed as inadequate. As it stood, the agreement was a binding contract between the parties. In *Trinity Prime Investment Limited v Lion of Kenya Insurance Company Limited* [2015] eKLR this Court, while discussing the import of a discharge voucher which is more or less similar as the agreement in question observed:

“The execution of the discharge voucher, we agree with the learned judge, constituted a complete contract. Even if payment by it was less than the total loss sum, the appellant accepted it because he wanted payment quickly and execution of the voucher was free of misrepresentation, fraud or other. The appellant was thus fully discharged.”

All the ELRC was required to do was to give effect to the intention of the parties as discerned from the settlement agreement. Our position is fortified by the sentiments of Sir Charles Newbold P. in *Damondar Jibabbhai & Co Ltd and another v Eustace Sisal Estates Ltd* [1967] EA 153 that:-

“The function of courts is to enforce and give effect to the intention of the parties as expressed in their agreement. In the English Court of Appeal case above - *Globe Motors Inc & Others v TRW Lucas Electric Steering Ltd & Others* (supra) – Lord Justice Beatson stated as follows: -

‘Absent statutory or common law restrictions, the general principle of the English law of contract is [that parties to a contract are free to determine for themselves what obligations they will accept]. The parties have the freedom to agree whatever terms they choose to undertake, and can do so in a document, by word of mouth, or by conduct.”

Giving effect to the parties’ intention meant that the ELRC could not entertain the suit filed by the respondent. This is because the respondent had waived his rights to make any further claim in relation to his relationship with the appellant.



I am in agreement with the reasoning of the Court that the execution of the discharge voucher constituted a complete contract. The Claimant herein accepted it after he had even complained at the Labour Office and I find that the execution of the voucher was free of misrepresentation, fraud or coercion. The Claimant alleged that he was forced to sign the discharge but this assertion was not pleaded at all as required in such a scenario in order to dislodge the discharge. The Respondent in my view therefore was thus fully discharged and does not need to answer the claim as it was an abuse of the court process.”

21. The Claimant does not object that he indeed signed the discharge voucher voluntarily without being coerced or misrepresented, therefore, by executing the same he entered into a contract with the Respondent discharging the Respondent from any other claim he may have in future.
22. The claimant also tendered his retirement voluntarily and there is no evidence that there was an agreement entered with the respondent that he was to be compensated upon retirement. This is not a case of being declared redundant and so section 40 of the *employment act* does not apply and cannot get severance pay.
23. The court finds the claimant has not proved he is entitled to the prayers contained in his memorandum of claim dated 24th November 2016. The claim is dismissed.
24. Each party will meet their respective costs of the suit.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 27TH DAY OF OCTOBER, 2023.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

