



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT MOMBASA

CAUSE NO. 316 OF 2018

MORRIS CHITSANGO NGOBA.....CLAIMANT

- VERSUS -

KENYA BIXA LTD..... RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 18th February, 2022)

JUDGMENT

The claimant filed the memorandum of claim on 11.05.2018 through Maari Nyaberi & Associates. The claimant's case is that he was employed by the respondent as a senior security officer from 02.02.2014 to 15.09.2016. His last monthly salary was Kshs.30, 000.00. The claimant was served a redundancy letter dated 15.09.2016 and it is his case that it was based on malice and bad faith, the termination notice was not given and it was in breach of the terms of the contract of service. He prayed for judgment against the respondent for:

- a) One-month salary in lieu of notice Kshs. 30, 000.00.
- b) House allowance 33 months Kshs. 4, 500.00 per month Kshs. 148, 500.00.
- c) Salary for October 2016 Kshs.30, 000.00.
- d) Service gratuity Kshs. 180,000.00.
- e) 12 months' salary pay for unfair termination of employment Kshs. 360, 000.00.
- f) Certificate of service.
- g) NSSF dues deducted but not remitted.
- h) Costs and interest (a to g) above at Court rates.

The respondent filed the memorandum of response on 19.02.2019 through the Federation of Kenya Employers. The respondent admitted it employed the claimant as pleaded by the claimant and the contract of employment ended on account of redundancy when the respondent's board decided to close down its poultry business and as a result the claimant being one of the employees in the poultry department was declared redundant. Further on 15.09.2016 the respondent issued a notice on intention to declare the claimant redundant and he received the notice. The notice stated the reason and intention to terminate on account of redundancy. The claimant was paid final dues including salary up to 15.10.2016; one month-salary in lieu of notice; accrued leave; service gratuity and less money owed to the respondent. Further he acknowledged payment. The procedure complied with section 40 of the Employment Act, 2007. The certificate of service was issued and all NSSF dues deducted remitted accordingly.

The claimant testified to support his case and the respondent's witness (RW) was Christopher Kiptis the Human Resource Manager since 2013. Parties filed their final submissions. The Court has considered all the material on record and finds as follows:

- a) There is no dispute that parties were in a contract of service as pleaded for the claimant and admitted by the respondent.
- b) The claimant testified that there was a staff meeting about the looming redundancy because the poultry department was performing poorly. He also confirmed that he received the letter dated 15.09.2016 addressed to him and being a 30 days' redundancy notice. The Court finds that the reason for redundancy was genuine and existed as at the time of redundancy per section 43 of the Employment Act, 2007. Further, contrary to the claimant's pleading, he was duly served the redundancy notice as prescribed in

section 40 of the Act. The Court finds that as submitted for the respondent the redundancy was fair in procedure and substance. He has not established a case for unfair termination and compensation in that regard. The role of senior security office was abolished as per the RW's evidence because security personnel had reduced and the Court finds no reason to doubt that the office held by the claimant was abolished.

c) The claimant confirmed he was housed by the respondent and the Court finds his claim for house allowance unjustified in view of section 31 of the Act. While the claimant has shown he was deducted Kshs. 600.00 per month in rent, there is no claim for refund of that deduction and the basis for house allowance at Kshs. 4, 500.00 as claimed was not established at all. In any event, the termination was on 15.10.2016 and the suit filed on 11.05.2018 long after lapsing of 12 months of limitation under section 90 of the Act for a such continuing injury whose cessation had been on 15.10.2016. He confirmed he was paid one-month in lieu of notice and 15 days worked in October 2016. His evidence was that he was a member of NSSF and in a pension scheme so that he was not entitled to claims about NSSF and service gratuity. In particular, he confirmed his NSSF dues were remitted. He confirmed he received a certificate of service and severance pay was paid per last pay slip. The Court finds that as submitted for the respondent the claimant is not entitled to any of the remedies as prayed for. While making that finding, the Court observes that parties were in agreement that the hearing of the suit had been stayed pending the hearing and determination of similar consolidated causes 950 of 2016, 88 of 2017 and 754 of 2017 in which the judgment delivered on 31.10.2019 dismissed all the matters as consolidated. The Court finds that while it is submitted for the claimant that the claimant felt the issues were different, no difference has been established in the present proceedings and it was unfortunate that the suit had to go to full hearing.

In conclusion judgment is hereby entered for the respondent against the claimant for dismissal of the memorandum of claim with costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT MOMBASA THIS FRIDAY 18TH FEBRUARY, 2022.

BYRAM ONGAYA

JUDGE