



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAIROBI

CAUSE NUMBER 804 OF 2017

BETWEEN

PATRICK OCHOLA OBWARE CLAIMANT

VERSUS

COLOUR LABEL LIMITED RESPONDENT

Rika J

Court Assistant: Emmanuel Kiprono

Billy Amendi & Company Advocates for the Claimant Amolo & Gacoka Advocates for the Respondent

JUDGMENT

1. The Claimant filed his Statement of Claim on 28th April 2017.
2. He seeks notice, compensation for unfair termination, costs, interest and any other suitable relief.
3. The Respondent filed its Statement of Response and Counterclaim, on 22nd May 2017.
4. The Claimant avers, he was employed by the Respondent as a General Worker, on a monthly salary of Kshs. 8,000 and travelling allowance of Kshs. 2,600. He avers, his contract was terminated by the Respondent on or about 12th May 2011, without notice or just cause.
5. The Respondent's position is that the Claimant deserted on or about 12th May 2011, after he realized that some labels, belonging to the Respondent, had disappeared from the Respondent's store under the Claimant's watch. He was paid notice, service and accrued annual leave, all added-up at Kshs. 32,027. Termination was lawful and fair.
6. The Claimant had previously sued the Respondent in Nairobi C.M.C.C No. 5246 of 2012, seeking among other orders, damages for breach of his contract of employment. The Claim was dismissed with costs to the Respondent. The costs were assessed, and certificate of costs issued, at Kshs. 37,150.
7. The Respondent counterclaims the sum of Kshs. 37,150, while praying that the Claimant's Claim is dismissed with costs.
8. The Claimant did not attend Court on the date appointed for hearing, 20th January 2022. His Claim was dismissed for non-attendance. What remains is determination of the counterclaim. The Court has noted that even had the Claimant attended Court, his Claim would have been rejected on two other grounds. One, it is *res judicata*, the Claimant having unsuccessfully sued the Respondent for breach of the same employment contract, at the Chief Magistrate's Court in Nairobi. Two, the Claim is statute- barred under Section 90 of the Employment Act, 2007. The Claimant pleads that his contract was terminated on or about 12th May 2011. He filed the Claim on 28th April 2017, well beyond the 3-year period given under Section 90 of the Employment Act.

9. The Counterclaim itself is irregular. It is based on costs awarded in the Chief Magistrate's Court. The Respondent ought to pursue execution in the relevant Court. Decrees of the Court are dealt with by the Trial Court, not by a different Claim, in a different Court, under Section 34 of the Civil Procedure Act.

IT IS ORDERED: -

- a. The Counterclaim is declined.*
- b. The file shall be marked as closed, the Claim having been dismissed earlier for non-attendance.*
- c. No order on the costs.*

DATED, SIGNED AND RELEASED TO THE PARTIES AT CHAKA, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 25TH DAY OF APRIL 2022.

JAMES RIKA

JUDGE