Raceguards Limited v Chea & 4 others (Employment and Labour Relations Appeal E002 of 2021) [2022] KEELRC 3784 (KLR) (29 July 2022) (Judgment)

Neutral citation: [2022] KEELRC 3784 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI

EMPLOYMENT AND LABOUR RELATIONS APPEAL E002 OF 2021

BOM MANANI, J

JULY 29, 2022

BETWEEN

RACEGUARDS LIMITED ..... APPELLANT

AND

NICODEMUS KATANA CHEA ..... 1ST RESPONDENT

SHAURI KENGA ..... 2ND RESPONDENT

MTAWALI KATANA ..... 3RD RESPONDENT

JOHN SIRYA MWAMUYE ..... 4TH RESPONDENT

STEPHEN KARISA KALAMA ..... 5TH RESPONDENT

JUDGMENT

1. This appeal arises from the decision of the magistrate's court exercising jurisdiction over employment and labour relations matters in CMELRC No. 25 of 2019. The decision was delivered on February 7, 2021. In the judgment, the trial court found in favour of the Respondents.

2. The Appellant (the Respondent before the trial court) was dissatisfied with the said decision by the trial court. And hence the decision to lodge the current appeal.

Facts of the Case

3. The five Respondents (the Claimants before the trial magistrate) were all employees of the Appellant having been employed on diverse dates between March 2007 and November 2013. They were hired as security guards.

4. On July 31, 2016, the Appellant terminated the contracts of service between the parties. As was claimed by the Respondents, the reason for their termination was that the assignment for which they were hired had come to a close. Hence, they were declared redundant.

5. From the Statement of Claim, although the Respondents asserted that their termination was without notice, they nevertheless did not challenge the validity of these terminations. Their only concern was the failure by the Appellant to pay them their terminal dues as enumerated in their joint claim. And hence their case to compel the Appellant to make these payments.

6. The Appellant filed a defence to the claim. In the defence, the Appellant denied liability to pay the sum of Ksh. 732,840/= to the Respondents allegedly being their consolidated terminal dues. It was the Appellant's case that the Respondents were paid their terminal dues in full and hence nothing remained outstanding between the parties.

Trial Court's Determination

7. After hearing the parties, the trial court held that the discharge vouchers executed by the current Respondents and which the Appellant relied on in support of its case to demonstrate that the Respondents had been paid all their dues were not a bar to the Respondents' fresh claims before him. In his view, the Respondents were not paid their terminal dues in terms of the applicable law. Therefore, they were entitled to pursue these dues by way of court action.

8. The court went ahead to allow the Respondents' prayer for house allowance, severance pay and salary in lieu of notice. However, he found that the Respondents had not proved their claim for overtime payment. As a result, he disallowed this latter claim.

The Grounds of Appeal

9. The Appellant was not satisfied with the above decision. Consequently, it filed appeal through the Memorandum of Appeal dated March 15, 2021 and filed on March 16, 2021.

10. The Appeal raises five grounds of appeal. These are: -

    a. That the trial magistrate erred in law and fact in entering judgment in the cause that went against the grain of evidence presented.

    b. That in his decision, the learned trial magistrate failed to consider the pleadings, evidence and submissions by the parties.

    c. That the learned trial magistrate misdirected himself when he held that the Respondents (Claimants before the trial court) had not been paid their terminal dues.

    d. That the trial court erred in law and fact when it failed to hold that the expiry of the contract between Raceguard Limited and Telkom Kenya necessitated the termination of the Respondents' respective contracts with Raceguard Limited.

    e. That the trial court failed to appreciate the pleadings and evidence before it thereby reaching the wrong decision.

Disposal of the Appeal

11. Directions on the mode of prosecution of the appeal were taken on June 20, 2021. During the directions the parties agreed to proceed by way of written submissions.

12. Despite the delay by the Appellant in meeting the timelines set for filing the submissions, the parties finally did file their submissions. I will consider these submissions alongside the entire record of the case in my decision.

Analysis and Findings

13. Being the first appeal, my obligation in law is to re-evaluate the evidence presented before the trial court with a view to reaching my own conclusion on the matter. However, I am obligated to give due regard for the fact that I did not have the benefit of taking the evidence in the matter. Therefore, I did not have the benefit of assessing the demeanour of the witnesses (see *Saimon Ntasikoi Noonkanas v Resolution Insurance Limited* [2021] eKLR).

14. Having indicated as above, I do not think that in this appeal much turns on ground number four (4) in the grounds of appeal. This is because before the trial court, the issue regarding the validity of the termination of the Respondents was not taken up. It was not an issue before the court. The main issue was whether the Respondents were entitled to the terminal dues pleaded in view of the payments they had received from the Appellant earlier on. I will therefore not interrogate this particular ground as there is no value addition in doing so.

15. An analysis of the other grounds yields the following questions for determination: -

    a. Whether the decision of the trial court went against the grain of the evidence that was tendered.

    b. Whether the trial magistrate was right to award the Respondents the terminal dues he ordered in the face of evidence that the Respondents had been paid some dues and executed discharge vouchers.

16. These two questions can be considered simultaneously as they are intertwined. I will analyze them from this perspective.

17. From the record, all the Respondents gave oral evidence and as well relied on their written witness statements. The record also demonstrates that the Appellant called one witness.

18. According to the Respondents, they were not paid their terminal dues upon their termination. Their position was that what was paid to them was money towards uniform reimbursement.

19. It is noteworthy though that the Respondents did not deny executing the respective payment vouchers produced in evidence. It is against these vouchers that the various payments were made to them.

20. During the trial and submissions, counsel for the Claimants tried to push the case that the Appellant did not provide evidence to show that the alleged payments to the Respondents were actually credited on their accounts. I must say that this attempt was unhelpful to the Respondents' case because they did not, in their testimony, dispute receipt of these sums. On the contrary, they confirmed having received the payments although it was their case that the payments were refunds of deductions made to their salaries to cover their uniform expenses while in service. Thus, the Respondents' problem was not whether the payments were made but what they were intended to settle.

21. I have looked at the payment vouchers against which the contested payments were made to the Respondents. The instruments are couched in the same language. This is what they state: -

> " I (Name)..... of ID Number..... confirm that I have received from Raceguards Ltd my full and final settlement of my dues as tabulated below and confirm that I have no other claim against the company.
>
> Uniform refund.....
>
> Other dues.....
>
> Total amount.....

Signature.....

Date.....

.....”

Right Thumb

22. In law, a discharge voucher is treated as a contract between the parties to it. Once executed, it is binding on them. As such, it may only be assailed and set aside on similar grounds as those that may be invoked to rescind a contract. These include: fraud; undue influence; coercion; misrepresentation; and mistake (see *Ronald Kipngeno Bii v Unliver Tea Kenya Limited* [2022] eKLR, *Gilbert Mugambi v Michimikuru Tea Factory Limited* [2018] eKLR and *Saimon Ntasikoi Noonkanas v Resolution Insurance Limited* [2021] eKLR).

23. Whilst it is true that the mere existence of a discharge voucher is no bar to the court opening up the instrument, court will only do so if invited to consider whether the voucher is vitiated by fraud, mistake, misrepresentation or undue influence. This position is made clear in the case of *Thomas De La Rue v David Opondo Omutelema* [2013] eKLR where the court observed as follows: -

> “We would agree with the trial court that a discharge voucher per se does not absolve an employer from statutory obligation and that it cannot preclude the Industrial Court from enquiring into the fairness of a termination. That is however, as far we are prepared to go. The court has in each and every case to make a determination, if the issue is raised, whether the discharge voucher was freely and willingly executed when the employee was seized of all the relevant information and knowledge”.

24. It is not open for the court to simply ignore the existence of such voucher and issue orders in total disregard of the instrument as such action amounts to the court rewriting the settlement contract between the parties. Ordinarily, the court’s role when faced with a pre-trial settlement between the parties is to give effect to the intentions of the parties as expressed in the settlement (see *Ronald Kipngeno Bii v Unliver Tea Kenya Limited* [2022] eKLR).

25. From the evidence presented before the trial court, the Respondents did not suggest that the vouchers they executed were fraudulently procured. Similarly, there is no plea that the vouchers were procured through misrepresentation, mistake coercion or undue influence.

26. All that the Respondents say in their reply to defence is that they were only paid refunds of their uniform charges. Yet, a reading of the vouchers demonstrates otherwise. It shows that the payments related to: uniform refund; and other dues.

27. Further, the vouchers are clear that the two payments were in full and final settlement of the Respondents’ dues and that the Respondents had no other claims against the Appellant. In other words, the Respondents, by these instruments, waived their right to make any other claims upon being paid the amounts in the vouchers.

28. In relation to whether the Respondents received the payments they clearly state in the vouchers that “I....confirm that I have received from Raceguard Ltd my full and final dues.....”. This statement is couched in plain language that requires no interpretation. It means that the funds in issue had already been transmitted to the Respondents at the time of signing the respective vouchers.

29. Counsel for the Respondents argues that because the Appellant’s witness did not particularize what comprised ‘’other dues’’ this was evidence of non-settlement of the Respondents’ terminal dues. With

respect, I do not agree. The Appellant was under no obligation to give particulars of what comprised ''other dues''. This is particularly so since the parties appeared to have agreed that whatever was paid constituted the Respondents' full and final payment of their dues.

30. In his judgment, the trial court rejected the binding nature of the vouchers on the grounds that they did not provide for full payment of the Respondents' terminal dues under the law. Clearly, the reason for rejecting the vouchers had nothing to do with whether they were procured through fraud, mistake, misrepresentation, undue influence or coercion.

31. Further, the trial court stated that there was no agreement between the parties on the settlement dues. Yet, the vouchers suggest otherwise. And from the record, none of the Respondents testified that there was disagreement on the amount to be paid as terminal dues before the discharge vouchers were executed.

32. I do not think that it was open to the court to reject the binding nature of the vouchers on the grounds that the amounts paid were less than what the law provides. Parties are free to agree on whatever amounts they elect in settlement of a matter between them so long as the law has not set a floor for them. And a court of law cannot intervene to substitute such settlement with its own award except where the settlement is shown to have been procured through fraud, misrepresentation, mistake, coercion or undue influence. Underscoring this point, the court in the case of *Coastal Bottlers Limited v Kimathi Mithika* [2018] eKLR expressed itself in the following terms: -

> "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 respondents' 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 there-under would be deemed as inadequate. As it stood, the agreement was a binding contract between the parties.''

33. A look at the trial court's decision reveals that although the Appellant raised the issue of the binding nature of the discharge vouchers that were signed by the Respondents in its pleadings, evidence and submissions, the trial court paid little attention to it. In fact, despite the court's attention being drawn to the Court of Appeal decision in the Coastal Bottlers Ltd case, it is evident that the trial magistrate did not make any reference to it. He did not explain why he deemed that the said decision should not impact on the case before him.

34. For the reasons expressed above, I agree with the Appellant that the trial court passed judgment that was contrary to the evidence tendered before him. I also find that the trial court erred in failing to hold that the vouchers exhibited by the Appellant were binding on the parties unless they were shown to have been procured through mistake, fraud, coercion, undue influence or misrepresentation.

Final Orders

35. Accordingly, I set aside the award by the trial court. Instead, I enter judgment dismissing the claim by the Respondents (Claimants in the trial court) before the trial court. I order that costs of the case before the trial court and this appeal are granted to the Appellant.

DATED, SIGNED AND DELIVERED ON THE 29TH DAY OF JULY, 2022

B. O. M. MANANI

JUDGE

In the presence of:

No appearance for the Appellant

Shujaah for the Respondent

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 April 2020, this judgment has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M. MANANI

JUDGE