



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 776 OF 2017

BETWEEN

LOICE APIYO OMOGA.....CLAIMANT

VERSUS

BANDARI SACCO SOCIETY LIMITEDRESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Onyango Oballa & Partners, Advocates for the Claimant

Akanga Alera & Associates, Advocates for the Respondent

JUDGMENT

1. The Claimant filed her Statement of Claim on 12th October 2017. She avers, she was employed by the Respondent as a Human Resource and Administration Officer, earning a gross salary of Kshs. 218,000 monthly. She was initially an Executive Personal Assistant to the Chief Executive Officer, assisting with general administration.
2. She worked for 3 years, ending 31st November 2016.
3. She asked the CEO to grant her annual leave of 3 days, on 28th October 2016. She continued assisting the CEO with various tasks through e-mail and phone, during this break. She was asked by the Respondent to extend her break by 13 days.
4. The Claimant did not hear from the Respondent after 13 days. The Respondent advised Security Guards not to allow the Claimant to the premises, and froze her salary and savings account altogether.
5. She states that she engaged Advocates to demand on her behalf: -
 - a. Notice pay at Kshs. 218,000,
 - b. November salary at Kshs. 218,000.
 - c. 16 pro rata leave days at Kshs. 80,000.
 - d. Gratuity at Kshs. 1,339,200.
 - e. Compensation for unlawful termination at Kshs. 2,616,000.

f. All benefits envisioned in the contract.

6. The Statement of Claim does not set out the relief sought.

7. The Respondent filed its Statement of Response, on 1st November 2017. Its position is that the Claimant held the position of Human Resource and Administration Officer from 1st September 2016 to 1st November 2016. She was not in this position throughout. Her contract was for 3 years, running from 1st November 2013 to 1st November 2016. The Respondent, somewhat confusingly, also submits that the contract lapsed on 31st November 2016. The contract was terminated in accordance with its termination clause. The Respondent was not under obligation to renew the contract. The Claimant handed over office to George Kidiga, on 28th October 2016. She had a balance of 3 annual leave days, which she took on 29th October 2016 pending expiry of her contract on 1st November 2016. The Respondent prays the Court to dismiss the Claim.

8. The Claimant and Respondent's Head of Operations, Agnes Mutitu Munyi, gave evidence for the respective Parties on 4th November 2019 when hearing closed. The 2 Witnesses underscored the contents of Parties' pleadings in their evidence. The matter was last mentioned in Court on 28th January 2021, when Parties confirmed filing of their Final Submissions, and the file transferred to the Trial Judge at Nairobi, for preparation of Judgment.

9. On cross-examination, the Claimant stated, her contract was for 3 years. It would end 30th October 2016. She took 3 days' annual leave at the end of her contract. She had a total of 16 pending leave days, which meant she had 13 days left, after utilizing 3 days. She went back after 13 days, on 22nd November 2016 and was barred by the Security Guards from gaining access. Munyi told the Court on cross-examination that the Claimant's contract was not renewed upon expiry. She emphasized that the Claimant was on fixed-term contract, which expired. There was no renewal clause. Termination was fair and lawful.

The Court Finds: -

10. The Claimant disregarded Rule 4 [g] of the E&LRC [Procedure] Rules 2016, on filing her Statement of Claim. This is a cardinal Rule, in commencement of Claims. It states: -

‘A party who wishes to refer a dispute to the Court under any written law, shall file a Statement of Claim, setting out-

[a]

[b]

[c]

[d]

[g] the relief sought.

11. The Claimant did not set out the relief sought, which is normally done at the end of the pleading, specifically stating as follows: -

‘ REASONS WHEREFORE, the Claimant prays for-

a.

b.

c.

etc. ‘

12. What the Claimant did was to inform the Court that she instructed her Advocates, who wrote a demand letter, asking for certain reliefs. At the end of the pleading, at paragraph 18 of the Statement of Claim, rather than indicate the prayers, the Claimant makes Submissions, then dates and signs her Statement of Claim.

13. A demand letter is not a Statement of Claim. What is demanded before action, is not necessarily, what is prayed before the Court. A Party coming to Court must comply with the Rules, and not just plead what demands were put out, before the filing of the Claim. The relief sought must specifically be pleaded in form of prayers. The Rules demand this. The Claimant did not even exhibit her demand letter, to buttress her Statement of Claim. This defect is not a mere procedural technicality. The Court must be informed what form of assistance the Claimant seeks. Without prayers being specifically placed before the Court, there is no Claim. The Statement of Claim is incurably defective, in that it does not show relief sought from the Court.

14. Barring this fundamental defect in the Statement of Claim, it is clear that the Claimant, was on a fixed term contract of 3 years, which commenced on 1st November 2013. The contract would on 31st October 2016. The contract document is exhibited by both Parties. It

specifically states that, “ the said period of employment shall be deemed to be completed on the date of expiry of any leave granted to the Employee, at the end of his/her term of engagement.” Parties interfered with what would logically have been the contractual date of termination- 31st October 2016- adopting the last date of annual leave, which extended beyond 31st October 2016, as the date of termination. This clause was not well thought out, because after 31st October 2016, the Claimant would not be expected to be an Employee of the Respondent under the term-specific contract executed on 1st November 2013. She would not be expected to be enjoying annual leave, after the expiry of her contract. The Claimant’s contract therefore ended, at the end of 16 days of annual leave. She states these ended on 22nd November 2016. She had already handed over her office to George Kidiga, before she went on leave, as shown in handing over notes dated 28th October 2016. She knew she was not going to continue being an Employee, when she handed over. There was nothing wrong in keeping the doors shut on her, after 22nd November 2016. She was no longer an Employee of the Respondent. She has not shown that her contract was unfairly terminated as required under Section 47[5] of the Employment Act 2007. The Parties were discharged of mutuality of obligations, in accordance with the contract they executed in 2013.

15. The Claim is declined for lack of specific reliefs pleaded, and for lack of proof of unfair termination.

IN SUM, IT IS ORDERED: -

a. The Claim is declined.

b. No order on the costs.

Dated, signed and released to the Parties electronically, under Ministry of Health and Judiciary Covid-19 Guidelines, at Nairobi, this 24th day of February 2021.

James Rika

Judge