



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 365 OF 2017

SAMWEL JUMA OJWANG

CLAIMANT

v

EQUATOR BOTTLERS LIMITED

RESPONDENT

JUDGMENT

1. In the submissions filed on 26 January 2021, Samwel Juma Ojwang (the Claimant) identified the Issues for determination as:

- (i) Whether the Claimant was a permanent employee of the Respondent?
- (ii) Whether the termination of the Claimant's employment was fair?

2. Equator Bottlers Ltd (the Respondent) filed its submissions on 8 March 2021, and it identified the Issues for adjudication as:

- (i) Whether the Respondent terminated the Claimant from employment or the contract lapsed by effluxion of time?
- (ii) Whether the Claimant is entitled to the reliefs sought?

3. The Claimant and a Human Resources Manager with the Respondent testified, adopted their witness statements and also produced exhibits.

4. The Court has considered the pleadings, evidence and submissions.

Nature of contract

5. The Claimant did not produce any copy of a contract between the Respondent and himself.

6. The Respondent produced a copy of a contract with the Claimant. It was dated 1 December 2012 and was a fixed-term contract for 3-months. The Respondent also produced a letter dated 2 July 2015 renewing the Claimant's contract for a further 3-months, to run up to 30 September 2015.

7. The Claimant was thus not a permanent employee of the Respondent. He was on fixed-term renewal contract(s).

Unfair termination of employment

8. The Claimant's contract was to lapse on 30 September 2015.

9. On 25 September 2015, just days to the lapse of the contract, the Respondent issued a show-cause notice to the Claimant to explain why he had overloaded a truck with 150 crates of soda. The Claimant replied to the show-cause through a letter dated 25 September 2015.

10. On the same day, the Claimant applied for 5 days annual leave to expire on 30 September 2015, and on 1 October 2015, he filled an Employee Clearance Form, and he was paid his terminal dues on 7 October 2015.

11. In his pleadings, the Claimant alleged that he was dismissed verbally without any justifiable cause. He repeated the same in the filed

witness statement.

12. In terms of section 47(5) of the Employment Act, 2007, the Claimant had the burden of proving that an unfair termination of employment had occurred.

13. The Claimant did not disclose the name of the Respondent's employee or Manager, who told him that his services were no longer required in the pleadings or witness statement.

14. The Court finds that he failed to discharge the burden.

15. The Respondent's case was that the Claimant's contract expired by effluxion of time, and to prove the same, it produced a Clearance Form showing that the Claimant cleared on 1 October 2015.

16. Considering the Clearance Form and the fact that the Claimant's contract was expiring on 30 September 2015, the Court is satisfied that this was not a case of unfair termination of the contract. The contract had lapsed.

17. Salary in lieu of notice and compensation are therefore not available remedies.

Accrued Leave

18. The Claimant sought 3-years accrued leave.

19. The Respondent produced the Claimant's leave records for 2014 and 2015 and documents to show that the Claimant had a balance of 6.8 leave days which were commuted. The Claimant received the payment.

20. Nothing turns on this head of the claim.

Conclusion and Orders

21. In consideration of the above, the Court finds no merit in the Cause, and it is dismissed with costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN NAIROBI ON THIS 7TH DAY OF APRIL 2021.

RADIDO STEPHEN,

MCI Arb

JUDGE

Appearances

For Claimant Mr Ouma instructed by Odhiambo Ouma & Co. Advocates

For Respondent Mr Oduor instructed by Odhiambo Owiti & Co. Advocates

Court Assistant Chrispo Aura