



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 1219 OF 2016

WARIO NDINDO NJIRO.....CLAIMANT

VERSUS

SOEX (K) LIMITED.....RESPONDENT

JUDGMENT

1. The suit was filed on 22nd June, 2016, by the Claimant praying for payment of terminal benefits and compensation for wrongful and unfair termination of employment as set out in paragraph 8 and 9 of the Statement of Claim.
2. The Claimant adduced evidence as C.W.1 by firstly adopting his witness statement filed on 22/6/2016 and producing the list of documents attached to the Statement of Claim as his evidence in Chief.
3. The claimant testified that he was employed by the respondent on 16th May, 2001 until March, 2016. That he worked as the gate security officer.
4. That on or about March, 2016, he reported to work as usual and the manager called the claimant to his office and told him to sign some documents. That the manager did not explain the contents of the documents to the claimant. That the claimant did not have ability to read and write. That he signed the documents without understanding the contents of the same. That the claimant was thereafter sent home.
5. That this was the second time the respondent was sending the claimant home from work. The respondent had done so in the year 2010 but the claimant returned to work through the help of the Ministry of Labour.
6. The claimant said he had a good record at work and had not faced any warning or disciplinary hearing.
7. That the claimant prays to be paid terminal benefits and General damages for the unlawful and unfair dismissal.
8. Under cross-examination the claimant stated that he worked from 6 a.m to 6 p.m daily and was brought lunch at work. The food was given to him by the company. That there were two security guards who worked on shifts of 12 hours each.
9. The claimant said he was made to put a thumb print on documents which he did not understand. That he was paid Kshs 50,000 via Mpesa. That he did not willingly resign from work. That he was dismissed and prayed to be paid more money. That National Social Security Fund was deducted but not remitted by the respondent. He wanted a refund of the same.
10. R.W.1 Joy Catherine Mwangi testified that she relied on a witness statement dated 30th July, 2018 in which she testified that the claimant resigned from employment on 16th October, 2014 after which he was rehired. That the claimant resigned again on 16th February, 2016.
11. That the claimant and respondent negotiated and converted the resignation to retirement and on 23rd March, 2016 both parties executed an agreement to retire in the presence of the claimant's friends and family who were there as witnesses.
12. That the claimant was fully aware of the effect and import of the agreement as the same was explained to him by his witnesses as well as by the respondent's manager.
13. The claimant was paid Kshs 50,000 as agreed under the agreement.
14. That the suit is an afterthought and it be dismissed with costs. That the claimant is not entitled to any of the reliefs sought.

Determination

The issues for determination are:-

(i) Whether the claimant was dismissed from work or he resigned voluntarily.

(ii) Whether the claimant is entitled to the reliefs sought.

15. The Court has carefully considered the pleadings, the testimony before Court and list of documents produced by the parties. The Court has further considered the written submissions by the parties and has come to the following conclusion of facts:-

16. The claimant was employed by the respondent on 6th May, 2001 as a Security Guard.

17. The Claimant worked continuously until the 15th November, 2014 when he resigned from work by a letter dated 16th October, 2014.

18. The claimant was rehired by the respondent on 16th February, 2016 and worked continuously until the 17th February, 2016 when he again resigned from work by a letter dated 16th February, 2016.

19. Both letters of resignation were produced before Court. The claimant did not deny appending his signatures on the letters but purports not to have understood the contents of the same.

20. The Court is satisfied that the claimant was made to understand vide explanation by the respondent's manager and by the claimant's witnesses comprising of his family and friends the contents of the letter of resignation dated 16th February, 2016.

21. Subsequently on 24th March, 2016, the parties entered into an agreement in terms of which the claimant retired from employment on account of old age. The letter signed by the parties and witnesses on 24th March, 2016 was produced before Court.

22. The Court is satisfied that the claimant voluntarily retired from employment following negotiations with the respondent and was paid terminal benefits in the sum of Kshs 50,000 receipt of which the claimant acknowledges.

23. The Court is satisfied that the suit by the claimant is an afterthought.

24. The claimant has failed to prove that his employment was unlawfully terminated by the respondent.

25. The suit lacks merit and is dismissed with no order as to costs.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF JULY, 2021.

MATHEWS N. NDUMA

JUDGE

ORDER

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this judgment has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

MATHEWS N. NDUMA

JUDGE

Appearances

M/s Kimiti for the claimant

Mr. Weru for Respondent

Ekale – Court Assistant