



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 491 OF 2017

BETWEEN

1. STANLEY MUTUA MULATYA
2. SANGA HILARY JILANI
3. CHARLES MGHANGA MWASICHO
4. MARGARET K. KAHINDI
5. SAMUEL MAINA KARANJA
6. HAMISI MWAMTUTU GOPHOLO.....CLAIMANTS

VERSUS

VECTORCON PEST CONTROL & SUPPLIES LTD.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Oluga & Company Advocates for the Claimants

N.A. Ali & Company Advocates for the Respondent

JUDGMENT

1. The Claimants filed their Joint- Statement of Claim on 21st June 2017. They state, they were employed by the Respondent, as Caretaker Service Operators on various dates. Their respective contracts of employment were terminated by the Respondent on 31st August 2016, in circumstances they hold to be unfair and unlawful. They were advised that a commercial contract the Respondent held with Aga Khan Academy where the Claimants had been assigned to, had lapsed.

2. They state that the Respondent did not follow redundancy law, in terminating their contracts. They at the time of termination, earned Kshs. 12,598 as monthly salaries.

3. They pray for Judgment against the Respondent as follows: -

A. STANLEY MUTUA MULATYA-

I. 12 months' salary in compensation for unfair termination at Kshs. 151,176.

II. Severance pay at 15 days' salary for each complete year of service, at Kshs. 14,172.

III. Annual leave pays, at Kshs. 14, 172.

Total...Kshs. 179,521

B. SANGA HILARY JILANI -

I. 12 months' salary in compensation for unfair termination at Kshs. 151,176.

II. Severance pay at 15 days' salary for every complete year of service at Kshs. 33,069.

III. Annual leave pays at Kshs. 33,069.

Total... Kshs. 217,315.

C. CHARLES MGHANGA MWASICHO -

I. 12 months' salary in compensation for unfair termination at Kshs. 151,176.

II. Severance pay at 15 days' salary for each complete year of service at Kshs. 11,527.

III. Annual leave pay at Kshs. 11,527.

Total ...Kshs. 174,230.

D. MARGARET K. KAHINDI -

I. 12 months' salary in compensation for unfair termination at Kshs. 151,176.

II. Severance pay at 15 days' salary for each complete year of service at Kshs. 14,172.

III. Annual leave pay at Kshs. 14,172.

Total...Kshs. 179,521.

E. SAMUEL MAINA KARANJA -

I. 12 months' salary in compensation for unfair termination at Kshs. 151,176.

II. Severance pay at 15 days' salary for each complete year of service at Kshs. 12,598.

III. Annual leave pay at Kshs. 12,598.

Total...Kshs. 176,372.

F. HAMISI MWAMTUTU GOPHOLO: -

I. 12 months' salary in compensation for unfair termination at Kshs. 151,176.

II. Severance pay at 15 days' salary for each complete year of service at Kshs. 51,966.

III. Annual leave pay at Kshs. 51, 966.

Total ... Kshs. 255,109.

4. The Claimants pray for costs, interest and any other suitable relief.

5. The Respondent filed its Statement of Response on 26th July 2017. It is conceded that the Claimants were all employed by the Respondent. They all executed contracts of service. The purpose and objective of the contract was solely and specifically, to perform a contract the Respondent held with the Aga Khan Academy. They would remain in employment as long as the contract between the Respondent and Aga Khan subsisted. Aga Khan Academy issued a 2-month termination of contract notice to the Respondent, in July 2016. The Respondent in turn issued the Claimants notices of termination of their respective contracts of employment. There was no redundancy. The Claimants' contracts lapsed after the head contract between the Respondent and Aga Khan Academy lapsed. The Respondent prays that the Claim is dismissed with costs.

6. Parties recorded pre-trial agreement that: the 5th Claimant Samuel Maina Karanja gives evidence on behalf of all the Claimants; the Witness Statements filed by the rest of the Claimants are admitted in evidence; all Documents filed by the Parties are adopted as exhibits; and Witness Statements filed by the Respondent are similarly adopted as Respondent's evidence.

7. The 5th Claimant and Respondent's Financial Controller Henry Martin Ochieng, gave evidence on 14th October 2019. Head of Operations Aga Khan Academy Firdes Jafferli Kanji, closed the evidence for the Respondent on 25th February 2020. The file was forwarded to the undersigned Judge on transfer at Nairobi, for preparation of this Judgment, on 23rd March 2021.

8. The 5th Claimant confirmed that the Claimants were employed by the Respondent, and assigned duties at Aga Khan Academy. They were cleaners. They were told by the Respondent upon termination, that the Respondent's contract with Aga Khan Academy, had come to an end. The Claimants assumed they were on permanent terms. On cross-examination, the 5th Claimant conceded that the Claimants signed contracts of employment with the Respondent. The contracts remained in place, as long as the contract between the Respondent and Aga Khan Academy subsisted.

9. Respondent's Financial Controller confirmed that the Claimants were employed by the Respondent, for the duration of the contract between the Respondent and Aga Khan Academy. On cross-examination he told the Court, it was not the Claimants' fault that their contracts were terminated.

10. Head of Operations Aga Khan Academy told the Court that the Claimants were outsourced as Cleaners for Aga Khan Academy. Their performance was substandard. Aga Khan Academy decided to terminate the contract with the Respondent. On cross-examination, the Witness told the Court he was not employed before 1st August 2015 and did not know what happened between the Parties, prior to his employment. He did not recall the exact date when the Claimants' performance deteriorated. He did not have the contracts or the letter which terminated the head contract.

The Court Finds: -

11. The Claimants were employed by the Respondent and assigned cleaning duties at Aga Khan Academy. They testified they were cleaners, although their contracts describe them as 'Caretaker Services Operators.'

12. The contracts exhibited by the Parties, clearly state: "*Your contract with Vectorcon [Respondent] shall remain in force as long as the contract between Vectorcon Pest Control & Supplies Limited and Aga Khan Academy is fully in force. An extension letter shall be drafted after every 6 months.*"

13. There is evidence that the Claimants, or some of them, had been offered similar contracts in the past by the Respondent, when the Respondent had contract for cleaning services with the Kenya Ports Authority. These past contracts had similar terms on renewal and termination, as the contracts relating to Aga Khan Academy.

14. The Respondent acted in accordance with the contracts, entered into with the Claimants. Their contracts were extended periodically after 6 months, as long as the head contract subsisted. Eventually they lapsed, in accordance with the clause on the contract period.

15. There is evidence from Aga Khan Academy that it terminated the contract it had with the Respondent. The reasons for termination of that contract are irrelevant to the Claimants' cause. It is sufficient that the Witness from Aga Khan Academy confirmed the contract was terminated.

16. Once this happened, the clause in the Claimants' contracts of employment on the contract period, kicked in. There was no redundancy. There was no reason for the Claimants to have considered themselves, to hold term-indefinite contracts. It was irrelevant that they were not at fault, in termination of their contracts. An occurrence which the Parties agreed, would determine the life of the contracts, took place. The Respondent cannot be faulted for wrongful or unfair termination. It issued notices that the Aga Khan Academy, had severed its relationship with the Respondent. The Claimants' relationship with the Respondent depended on the status of the relationship between the Respondent and Aga Khan Academy. The death of one, meant the death of the other.

17. The Claimants have not established their Claim.

IT IS ORDERED: -

a. The Claim is declined.

b. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES AT NAIROBI, UNDER MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 7TH DAY OF JULY 2021

James Rika

Judge