



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 302 OF 2020

GEORGE OKETCH.....CLAIMANT

VERSUS

ALTRON BYTES KENYA LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant filed suit on 16/6/2020 seeking a declaration that his dismissal from employment by the respondent was unlawful and unfair and that he be reinstated to his employment without any loss of salary and in the alternative, he be paid maximum compensation of the equivalent of 12 months' salary for the unlawful dismissal.

2. Further the claimant sought payment of terminal benefits including:-

(i) One month salary in lieu of notice.

(ii) Unpaid leave days.

(iii) Unpaid commissions.

(iv) He be granted Certificate of Service.

(v) Costs and interest.

3. C.W.1 the claimant testified that he was employed by the respondent previously known as **Altech Stream East Africa Limited** on 24th September, 2010 as a Business Development Manager with effect from 1st October, 2010. That he served 3 months' probation and earned a consolidated salary of Kshs 400,000.

4. That he worked diligently and was transferred to Bytes Technology Group Kenya vide a letter dated 8th November, 2018 effective from 1st November, 2018. That consolidated annual salary was Kshs 6,240,528 subject to review from March, 2019 as per the terms of the new appointment.

5. On 6th March, 2019, the claimant's salary was reviewed by an increment of 5% effective 1st March, 2019. The annual salary therefore rose to Kshs 6,492,074.40.

6. The claimant received a letter of compliment from the Managing Director in March, 2019 in recognition of the good contribution to the company for the past one year.

7. A new Managing Director was engaged and soon the claimant started experiencing difficulties. Some time in November, 2019, the Lady Managing Director, Summoned the claimant to her office and informed him that the company was experiencing economic challenges and that the claimant had the option of either resigning or wait to be laid off.

8. Claimant testified that this caught him by surprise since he was not aware of any economic challenges.

9. The claimant upon considering the options given to him opted to tender a letter of resignation dated 11th November, 2019 on condition that

the 12 years completed by the claimant with the company would be considered in the exit package.

10. On 6th March, 2010, the respondent acknowledged receipt of the letter of resignation. The respondent stated that the claimant was not entitled to service pay since he was a member of a Pension Scheme and that commission payable to him was Kshs 19,523.14.
11. The claimant learnt that immediately he put in the letter of resignation the respondent appointed another employee to fill his position and no other employee was laid off duty that period.
12. The claimant testified that the respondent caused the claimant to resign under false pretences of an economic crunch.
13. The claimant stated that he had no intentions of resigning from his employment but was duped to make the decision. The claimant prays for reinstatement to his job and other reliefs sought.
14. The respondent had filed a statement of defence to the suit dated 2nd October, 2020 in which the respondent admitted the employment of the claimant and his transfer to the respondent company as the Business Development Manager.
15. The respondent stated that Bytes Technology Group Kenya Limited was a subsidiary of Bytes Technology Group (Pty) Limited a division of Alton TMT (Pty) Limited, the previous employer.
16. The salary increment of the claimant by 5% to Kshs 6,492, 074.40 was admitted and so was the commendation by the Managing Director at the time Mr. John Regan.
17. The respondent stated also that the claimant tendered his resignation by a letter dated 11th November, 2019.
18. The respondent denied all the allegations of difficulties experienced by the claimant and his being duped by the new Managing Director to resign and put the claimant to strict proof thereof.
19. The respondent did not participate in the hearing and so did not cross-examine the claimant to test the veracity of his testimony nor did the respondent adduce any evidence to contradict the testimony by the claimant under oath.
20. The hearing date of the suit, being 31st May, 2021, was set by the Court on 30/11/2020 by consent of counsel for both parties. The claimant was represented by M/s Oledo, Advocate whereas the respondent was represented by M/s Wataka, holding brief for Mr. Jela for the respondent.
21. On the 31st May, 2021, there was no appearance from the respondent and no explanation was therefore given to the Court for their failure to attend the trial.
22. The suit is thus undefended and the issue for determination is whether the claimant has proved his case on a balance of probabilities and what relief, if at all, is the claimant entitled to.
23. The claimant informed the Court that he resigned from his employment by a letter dated 11th November, 2019. The Claimant produced the letter of resignation. The Court has considered the said letter and does not find any complaint by the claimant therein that the claimant was coerced and or duped to tender his resignation under false pretenses as he stated in his testimony before Court.
24. The claimant only refers to a discussion between himself and the Country Manager on a date that was not stated which discussion he said centered ***“on the present economic times and its effect on the company’s workload.”***
25. The claimant went further to state that ***“both parties were in concurrence”*** that the resignation was in the best interest of the respondent.
26. The only rider that the claimant put in the letter was that the respondent would consider his 12 years dedicated service to the respondent and that he be paid his commission for the concluded business deals.
27. The respondent accepted the letter of resignation by a letter dated 6th March, 2020. The respondent stated therein that since the claimant had voluntarily resigned from his position and was a member of the company pension fund, no gratuity was payable to him.
28. The respondent also stated that the claimant was entitled to outstanding commission on concluded business in the sum of Kshs 19,533.14.
29. The claimant relied on payslips for the pay period 31/12/2018; 30/4/2019 and 31/5/2019. The payslips show that the claimant was paid monthly salary and was a member of a pension fund to which monthly payments were made by the employer and the claimant.
30. The payslip for 31/5/2019 indicates that the claimant was paid Annual Bonus in the sum of Kshs 788,323.32 less taxation.
31. The claimant has failed to demonstrate that his employment was unlawfully and unfairly terminated by the respondent. To the contrary, the Court is satisfied that the claimant voluntarily resigned from his employment. The claimant was not coerced to resign by any unlawful conduct on the part of the respondent.

32. The claimant has therefore failed to discharge the onus placed on him under Sections 107 and 108 of the Evidence Act, Cap. 80 Laws of Kenya to prove his case on a balance of probabilities.

33. The claimant is therefore not entitled to any compensation in terms of Section 49(1) (c) of the Employment Act, 2007.

34. The claimant having resigned is not entitled to notice pay in terms of Section 36 of the Employment Act, nor in terms of the provisions of his contract of employment.

35. The respondent has demonstrated that it paid the claimant all terminal benefits due to him including salary for days worked; in lieu of leave day's not taken and cumulated commission.

36. The claimant was granted a certificate of service.

37. The suit is therefore, dismissed in its entirety. Considering all the circumstances of the case, especially the excellent service rendered to the respondent by the claimant, the Court considers this an appropriate case for each party to bear their costs of the suit.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 21ST DAY OF OCTOBER, 2021

MATHEWS N. NDUMA

JUDGE

Appearances

M/s Oledo for the Claimant

Mr. Jela fo Respondent

Ekale – Court Assistant