



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI

EMPLOYMENT CLAIM NO 45 OF 2018

SAFARI MOKOLI YERI.....CLAIMANT

VERSUS

COUNTY ASSEMBLY SERVICES BOARD OF KILIFI..... RESPONDENT

JUDGMENT

1. This suit is by the Claimant against the Respondent seeking compensation for alleged wrongful termination. The claim is opposed by the Respondent.
2. In the amended Statement of Claim, the Claimant asserts that he was employed by the Respondent as a watchman on 1st December 2016. That his starting salary was Ksh. 7,900/=.
3. The Claimant asserts that he was unlawfully terminated on 15th March 2018. That the termination was without notice and without payment of his final dues. That his salary was withheld between October 2017 and March 2018.
4. The Claimant has provided a detailed breakdown of what he believes to be his dues. These include: leave dues for four (4) years; pay in lieu of notice; withheld salary; unpaid house allowance; unpaid overtime; gratuity; and pay for public holidays he worked.
5. The Respondent denies the claim. It is the Respondent's case that the Claimant's contract, having been for a fixed term, lapsed on the appointed date. The Respondent indicates that the Claimant was first engaged on 1st December 2016. That this contract lapsed at the close of March 2017 but was renewed on 3rd April 2017 and ran up to 31st July 2017. It was not renewed thereafter. Consequently, it lapsed due to effluxion of time.
6. The Respondent contends that the Claimant was paid all his terminal benefits when the first contract lapsed and thereafter at the close of the renewed term. That there were no other benefits due to the Claimant that were pending for processing.
7. At the trial, both the Claimant and the Respondent's witness testified. They adopted their respective witness statements and also produced copies of the documents filed in court as their exhibits.
8. According to the Claimant's testimony, he had first worked for the Respondent in 2013. Around the close of 2016, he was engaged as a watchman at a salary of Ksh. 7900/=. He signed a contract.
9. The Claimant testified that he used to work during the night shift. That he was stationed at the Respondent's Magarini Ward office.
10. The Claimant stated that he remained in the Respondent's service up to around 17th July 2017 when he was asked by the local Member of County Assembly (MCA) to leave. However, on the following day, he was asked to stay on awaiting further directions from the MCA.
11. Apparently, this state of affairs was prompted by the impending elections in the Ward. Because of the transition in office that is caused by elections, it does appear that some staff would sometimes be asked to leave office to permit the incoming elected leaders to propose to the Respondent new staff that they are comfortable working with.
12. As a result of the anticipated transition, the Claimant says that all staff at the Respondent's Magarini office except him left office. The outgoing MCA asked the Claimant to remain in charge of the office until after the elections were finalized for his case to be addressed.
13. On issues of pay, the Claimant indicated that he was told that some security firm will process his salary during the transition period. This was to remain until the MCA was re-elected if at all. The Claimant says that it is under these circumstances that he continued to work.

14. That on 1st October 2017, the Claimant states that he was told his contract with the Respondent had lapsed. He got this information from an official of the Respondent. For some reason, the Claimant remained at the Respondent's offices even after this communication. But all this time, he was not being paid.
15. In cross examination, the Claimant stated that although his contract lapsed in July 2017, he was asked by the area MCA Magarini Ward to continue looking after the Respondent's Magarini office. However, he conceded that he had no proof of this arrangement.
16. The Claimant says that between August 2017 after his contract lapsed and September 2017, his entitlements were settled by a security firm whose name he does not remember. That in October 2017, he reverted back to the Respondent. However, he concedes that there was no fresh contract of service signed between him and the Respondent. He contends that it is the local MCA who asked him to continue working pending signing of the renewed employment contract with the Respondent.
17. The Claimant states that this state of affairs went on up to March 2018. All this time, he was not receiving any salary from the Respondent. Alarmed by these developments, the Claimant states that he made inquiries from the Respondent why his salary was not being remitted. It is at this juncture that he was told by the Respondent's staff that he was not on the payroll of the Respondent. That the area MCA had recommended someone else for the position of watchman Magarini office.
18. The Respondent's witness explained the procedure of hiring staff at County Assembly Ward offices. This procedure is anchored in the Ward Management Policy. That as this is a political office, the area MCA is given a chance to pick the individuals he/she would like to work with. After this is done, the MCA forwards the names to the Respondent for employment.
19. The witness stated that the Claimant was hired through a similar process. His contract ran up to March 2017 when it was renewed to run up to close of July 2017 the time the MCAs were to remain in office before the next elections.
20. At the close of the period, the Claimant was paid his terminal benefits worked out at 31% of his basic salary. RW1 produced records showing that the Claimant was paid Ksh. 9796/= when the first contract lapsed and Ksh. 9796/= when the renewed term ran out.
21. In cross examination, RW1 stated that he did not have evidence that the Claimant acknowledged receipt of these payments. However, he explained that this was because the Respondent did not handle cash issues for staff. That this money comes from the Central Government and is remitted directly into employees' accounts by the appointed bank. That all the Respondent does is to submit to the bank a schedule of its employees to be paid which also shows the sums due to every of the employees. That after the bank credits staff accounts, it does not file acknowledgement of payments with the Respondent.
22. RW1 stated that the Claimant's contract expired on 31st July 2017 and was not renewed. Consequently, it was not correct as asserted by the Claimant that he had been unfairly terminated.
23. At the close of the case, both parties filed their written submissions. The submissions reiterate their respective positions in the suit.
24. The first set of documents that is critical to the court's decision comprises the contracts of service between the parties. In his exhibits, the Claimant produced two (2) contract instruments: one is dated 1.12.2016 and the other is dated 3.4.2017. The first was to run between 1st December 2016 and 31st March 2017. The second was to run between 3rd April 2017 and 31st July 2017. The Respondent has also relied on the two contracts.
25. From the instruments aforesaid, it is clear that the contracts were for a fixed term. They have no provision for their extension. In effect, these contracts were to remain valid only for the duration expressed in the instruments. If the parties were to opt to continue with the employment relationship, they would be getting into an entirely new contract.
26. In **Mombasa Apparels (EPZ) Limited v Tailors and Textiles Workers Union [2016] eKLR**, the court expressed the view that fixed term contracts elapse automatically through effluxion of time. They are not automatically renewable. They can only extend beyond their term by mutual agreement of the parties to the contract.
27. Sometimes, parties to this type of contracts may include a renewal clause in them. Where this is the case, then the contract may be renewed in line with the indicators captured in the renewal clause.
28. Only in instances where the contract has a renewal clause and the employee has met the conditions in the clause can he have a contractual expectation that the contract would be renewed (see **Joseph Maina Theuri v Gitonga Kabugi & 3 others [2017] eKLR**). This does not apply in instances where the contract has no renewal clause.
29. Indeed, the general position in law is that parties to a fixed term contract are bound by the terms set out in the contract. There is no general principle of law that a court should imply the principle of legitimate expectation to renew such contracts particularly where this cannot be inferred from the instrument or the conduct of the parties. To do so is to re-write the contract between the parties (see **Trocaire v Catherine Wambui Karuno [2018] eKLR**).
30. Applying the foregoing principles to this dispute, it is clear to me that the parties had a fixed term contract of service whose lifespan terminated on 31st July 2017. The contract makes no provision for its extension. At the same time, there is nothing on record to suggest that the Respondent conducted itself in any way that suggested to the Claimant that it was going to renew the contract.
31. As a matter of fact, there was no direct communication between the Claimant and the Respondent regarding employment after the 31st of

July 2017. All I see from the Claimant's evidence is that it is the MCA Magarini who asked him to stay on at the Ward office beyond 31st July 2017.

32. Indeed, the Claimant suggests that after this date, a security company whose names he does not recall took over management of security of the office and was responsible for paying the Claimant's salary until October 2017 when he believed he had reverted to the Respondent as an employee. However, his salary was never remitted by the Respondent after July 2017. And this was to remain the position until March 2018 when he says he was told that he was not on the payroll of the Respondent.

33. All this evidence is testimony of the fact that the Respondent never retained the Claimant's services after 31st July 2017. Therefore, the question of the Respondent having allegedly terminated a contract of service between the parties in March 2018 cannot arise.

34. As regards the reliefs sought, the Respondent's witness produced records to show that the Claimant was paid terminal dues at the end of March 2017 and July 2017. Although there was no evidence of acknowledgement of the payments by the Claimant, I believe the Respondent's witness's evidence that this is because a third party (the bank) was handling the actual payments.

35. In view of the foregoing, I find no merit in the Claimant's claim. Accordingly, it is dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED ON THE 7TH DAY OF DECEMBER, 2021

B O M MANANI

JUDGE

In the presence of:

No appearance for the Claimant

Mwanyika for the Respondent

ORDER

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th April 2020, this judgment has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B O M MANANI

JUDGE