



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 2023 OF 2013

PETER OGWENO ONYANGO.....CLAIMANT

VERSUS

METAL EQUIPMENT ENGINEERING COMPANY

LIMITED.....RESPONDENT

(Before Hon. Justice Hellen S. Wasilwa 27th February, 2020)

JUDGEMENT

1. The Claimant filed a Claim on 17th October, 2013 .He avers that he was employed by the Respondent as a welder in February 2002 until 2012 when he was unfairly terminated. He seeks the following reliefs:-

a. Salary for May 2013 Kshs. 14,583/=

b. Leave allowance Kshs. 4,861/=

c. Service 14,583 x 4x4/12 Kshs. 19,444/=

d. I year salary payment for unfair termination

(Kshs. 14,583x12) Kshs. 174,996/=

e. Costs of the claim

f. Interest on (b), (c) and (d) from the date of filing the claim to its conclusion.

2. The Respondent filed a Statement of Defence on 29th January, 2014 denying the Claimant's averments. It avers that it contracted the Claimant to conduct welding and metal works when need arose on a month to month basis as evidenced in his employment contract.

3. It avers that the Claimant's employment was not unfairly terminated due to the fact that he was contracted for the month of April 2013 and his contract lapsed on 6th May, 2013. It contends that the Claimant was paid all his dues thus he is not entitled to any other sum.

Claimant's case

4. The Claimant, cw1, adopted his Witness Statement dated 5th April, 2017 as his evidence in chief. He testified that he worked for the Respondent from 2002 to June 2013. It was his testimony that he was previously employed as a casual but in 2002 he was placed on a monthly contract.

5. He testified that he earned a salary of Kshs. 15,583 per month and that on 6th May, 2013 he was informed by Mr. Jinu that his salary would be reduced by Kshs. 3,000.

6. He testified that he was escorted out of the premises by the Respondent's guards. He testified that he was not issued with a notice prior to

his termination and that he had never engaged in any misconduct.

7. In cross-examination, he testified that the payslips he produced in court were from the month of September 2013, which indicated that his salary was Kshs. 12,220 and house allowance of Kshs. 1833. He testified that he never went on leave but acknowledged that his payslip indicated a pay of Kshs. 877 as leave pay.

8. In re-examination, he testified he had no contract of employment in 2002.

Respondent's case

9. Peter Mutua, RW1, an engineering foreman at the Respondent testified on behalf of the Respondent and adopted his Witness Statement dated 19th June, 2019 as his evidence in chief.

10. He testified that the Claimant was employed by the Respondent as a casual and that he served the Respondent on a one month contract. He testified that he was the Claimant's supervisor and that the Claimant delayed in performing his delegated tasks.

11. He testified that the claimant was paid house allowance, leave allowance amongst other payments that he was entitled to.

12. In cross-examination, he testified that he had no document indicating that he works for the Respondent but testified that he has worked for the Respondent since 1990 while the Claimant started working for the Respondent from 2002 to 2013.

13. He testified that the Claimant was signing one month contracts as a casual. It was his testimony that contracts were introduced on 2012. He testified that he had no evidence that the Claimant was slow in performing his duties.

Claimant's submissions

14. The Claimant submits that he was chased away without notice and without payment of his terminal dues. He urges the Court to find that the Respondent breached the provisions of Section 45 (1) of the Employment Act. He further submitted that the Respondent breached Section 35 of the Employment Act.

Respondent's submissions

15. The Respondent submits that the Claimant's contract of service was a one month contract effective 1st April 2013 to 30th April 2013. It therefore submits that the Claimant's employment contract was terminated in accordance with Section 35 (1) (b) of the Employment Act thus the claim for wrongful and unfair termination does not arise.

16. It submits that the Claimant's salary was inclusive of all minimum conditions as itemised in his pay slip. It submits that it provided the Claimant with all minimum conditions of employment which were not limited to house allowance, overtime amongst others.

17. I have examined all the evidence and submissions of both Parties. From the evidence of the Claimant, he was employed in 2002 to 2012. The Respondents aver that he was employed only for 1 month contract in April 2013 and that his contract came to an end.

18. The Claimant exhibited pay slips for various month e.g. September 2012, March 2013, October 2013, November 2012, December 2012, January 2013 and February 2013, which show that he worked for Respondent over some period in 2012 to 2013.

19. The Respondent alleges he only contracted the Claimant on need basis from month to month and they exhibited several contracts to support this contention running from January to April 2013.

20. There is no explanation as to the payslips from previous years and there exists no contracts before 2013. This supports the contention by the Claimant that he worked before 2013 and was only placed on monthly contracts in 2013 and thereafter terminated.

21. The fact that the Claimant served the Respondent and that he was a member of NSSF and his remittances were made by the Respondent is not denied.

22. The assertion that the Claimant served only a 3 month contract however beats logic as the Respondent would not have introduced him to NSSF as their employee and remit NSSF dues only for that monthly contract.

23. My view is that the Claimant served the Respondent longer than 3 months and his termination was done without due process. I find for Claimant and I award him as follows:-

1. Salary for May 2013 – Kshs.14,583/

2. 10 months' salary as compensation for unlawful and unfair termination = 10 x 14,583 = 145,830/=

Total = 160,413/=

3. The Respondent to pay costs of this suit plus interest at Court rates with effect from the date of this judgement.

Dated and delivered in open Court this 27th day of February, 2020.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Asman holding brief Khan for Respondent

Claimant – Absent