



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI**

**CAUSE NO 52 OF 2018**

**OBADIAH KEBABE GISORE.....CLAIMANT**

**VS**

**UMOJA RUBBER PRODUCTS LIMITED.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. This is an employment claim by Obadiah Kebabe Gisore against his former employer, Umoja Rubber Products Ltd. The claim is by way of a Statement Claim filed in court on 29<sup>th</sup> May 2018. The Respondent responded by way of a Memorandum of Response filed on 15<sup>th</sup> May 2019.

2. At the trial, the Claimant testified on his own behalf and the Respondent called its Human Resource Manager, Ahmed Mohamed Rashid. Both parties further filed written submissions.

**The Claimant’s Case**

3. The Claimant states that he was employed by the Respondent on 11<sup>th</sup> November 2016, as a helper earning a monthly salary of Kshs. 8,000. He later signed a three (3) months’ contract ending on 11<sup>th</sup> February 2017.

4. The Claimant claims that the Respondent terminated his employment on 3<sup>rd</sup> January 2017 because he had been unwell from 28<sup>th</sup> December 2016.

5. The Claimant states that he received medical attention at Milele Medical Clinic and that on 29<sup>th</sup> December 2016, he notified the Company of his medical condition.

6. On 3<sup>rd</sup> January 2017, the Claimant reported to work but was instructed by the Senior Supervisor, a Mr. Bonge to see the Accountant, a Mr. Dan. Dan informed the Claimant that his services were no longer needed.

7. The Claimant avers that as a result of the Respondent’s action, he has suffered loss and damage. He therefore claims:

- a) One month’s salary in lieu of notice.....Kshs. 8,000
- b) Salary for remainder of contract (1 month & 11 days).....2,933
- c) Salary for December 2016.....8,000
- d) Compensation for unfair termination.....24,000
- e) Costs

**The Respondent’s Case**

8. In its Memorandum of Response dated 14<sup>th</sup> May 2019 and filed in court on 15<sup>th</sup> May 2019, the Respondent states that the Claimant was employed as a general labourer for a period of one (1) month beginning 1<sup>st</sup> December 2016 to 31<sup>st</sup> December 2016 at a consolidated salary of Kshs. 6,957.50.

9. The Respondent further states that while in employment, the Claimant would often absent himself from work with no justifiable reasons. He would report back and be re-engaged.

10. The Respondent avers that on the alleged date of termination, the Claimant absented himself from work and did not return, only for the Respondent to be served with the present claim.

11. The Respondent claims that the Claimant is a vexatious litigant, in the habit of bringing suits against his former employers, with a similar story line that he was sick. The Respondent cites the following cases in this regard:

a) *MLD ELRC Cause No 54 of 2017: Obadiah Kebabe Gisore v Rea Vipingo Plantations Ltd;*

b) *MLD ELRC Cause No 8 of 2018: Obadiah Kebabe Gisore v Teita Tea Estate Ltd;*

c) *MLD ELRC Cause No 52 of 2018: Obadiah Kebabe Gisore v Umoja Rubber Products Ltd.*

12. The Respondent states that in all the above referenced cases, the Claimant claims having been terminated after falling sick.

13. In denying the Claimant's present claim, the Respondent states that it has no employees by the names Bonge and Dan mentioned in the Claimant's Statement of Claim.

14. The Respondent further states that on 30<sup>th</sup> December 2016, the Claimant was paid the sum of Kshs. 4,850 being salary for December 2016, leave earned less days of absence.

15. The Respondent concludes that having been engaged for only 1 month, the Claimant cannot bring a claim for unfair termination.

### **Findings and Determination**

16. There are two (2) issues for determination in this case:

a) Whether the Claimant has made out a case of unlawful termination of employment;

b) Whether the Claimant is entitled to the remedies sought.

### **Unlawful Termination?**

17. The Claimant's case is that his employment was unlawfully terminated on 3<sup>rd</sup> January 2017 because he had been unwell from 28<sup>th</sup> December 2016, as a result of drinking contaminated water at the Respondent's premises.

18. The Claimant told the Court that he received treatment at Milele Medical Clinic where he was given six (6) days' sick leave. Sick leave is a right secured under Section 30 of the Employment Act.

19. Section 30 (1) and (2) of the Employment Act provides as follows:

***30. (1) After two consecutive months of service with his employer, an employee shall be entitled to sick leave of not less than seven days with full pay and thereafter to sick leave of seven days with half pay, in each period of twelve consecutive months of service, subject to production by the employee of a certificate of incapacity to work signed by a duly qualified medical practitioner or a person acting on the practitioner's behalf in charge of a dispensary or medical aid centre.***

***(2) For an employee to be entitled to sick leave with full pay under subsection (1), the employee shall notify or cause to be notified as soon as reasonably practicable his employer of his absence and the reasons for it.***

20. The Claimant told the Court that he notified his employer that he had been granted sick leave, by word of mouth through his colleague and neighbour, one John Mutinda. This was not the right procedure; if the Claimant was unable to communicate directly with his employer for whatever reason, he ought to have sent the certificate of incapacity through his stated colleague and neighbour, John Mutinda. At any rate, Mutinda was not called as a witness to corroborate the Claimant's word.

21. In support of his case, the Claimant produced a document dated 28<sup>th</sup> December 2016 issued by Milele Medical Clinic. The document was however not signed as required under Section 30(1) of the Employment Act. Moreover, by his own admission, the Claimant waited until 3<sup>rd</sup> January 2017, which would have been the end of his sick leave, to present the document from Milele Medical Clinic.

22. In the result, I find and hold that the narrative advanced by the Claimant that his employment was terminated because he had been unwell was not supported by any credible evidence. The said narrative is therefore rejected with the corollary finding that the Claimant failed to discharge the burden of proof placed upon him by Section 47(5) of the Employment Act to substantiate his complaint that his employment was unfairly terminated.

23. The claims for compensation and notice pay are therefore without basis and are dismissed.

24. The claim for salary for December 2016 was not proved and is also dismissed.

25. In the end, the Claimant's entire claim fails and is dismissed with costs to the Respondent.

26. It is so ordered.

**DATED SIGNED AND DELIVERED AT MALINDI THIS 12<sup>TH</sup> DAY OF FEBRUARY 2020**

**LINNET NDOLO**

**JUDGE**

Appearance:

Miss Omollo for the Claimant

Miss Opolo for the Respondent