



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 290 OF 2019

MICHAEL OMONDI.....CLAIMANT

V

CHLORIDE EXIDE KENYA LTD.....RESPONDENT

RULING

1. Michael Omondi (Claimant) was offered employment as a Solar Sales Representative through a letter dated 2 July 2013 by Chloride Exide Kenya Ltd (Respondent).
2. The contract was to lapse on 31 July 2014 and the Claimant's duty station was Meru.
3. On 20 July 2015, the Respondent's Sales Manager notified the Claimant of transfer to Nairobi.
4. On 22 February 2016, the Respondent's Human Resources Manager notified the Claimant of a transfer to Kampala to take up the position of Solar Sales Representative.
5. Simultaneously with the transfer letter, *Battery Masters (U) Ltd* wrote to the Claimant on the same day to formally offer him the position of Solar Sales Representative.
6. On 13 January 2017, the Respondent's Human Resources Manager under the letterhead of *Battery Masters (U) Ltd* notified the Claimant of his appointment as acting Country Manager.
7. The job description, however, was on the Respondent's letterhead.
8. On 31 May 2018, the Claimant issued a notice of resignation and the resignation was accepted on the same day by the Respondent's Human Resources Manager but on the letter head of *Battery Masters (U) Ltd*. The letter also set out the Claimant's terminal dues.
9. The Claimant thereafter entered into discussions with the Respondent on payment of the terminal dues but no agreement was reached as a result of which the Claimant filed these proceedings on 7 May 2019 alleging unfair termination of employment and breach of contract.
10. Filed together with the *Statement of Claim* was an application seeking an order compelling the Respondent to pay the Claimant's terminal dues and to provide a P 9.
11. The main ground advanced by the Respondent in resisting the application was that the Claimant had no contractual relationship with it, but was an employee of *Battery Masters (U) Ltd*, and therefore the application ought to be dismissed.
12. The Court has carefully considered the employment records filed in Court together with the oral submissions and concludes that question of the employment relationship between the Claimant and the Respondent is a disputed and therefore triable issue which should be taken for trial before a determination is made as to the whether the Respondent is liable to the Claimant.
13. From the foregoing, the Court finds no merit in the application filed in Court on 7 May 2019, and orders it dismissed with costs.

Delivered, dated and signed in Nairobi on this 13th day of March 2020.

Radido Stephen

Judge

Appearances

For Claimant Mr. Okuta instructed by Okemwa & Co. Advocates

For Respondent Ms. Gachihi instructed by Kembi-Gitura & Co. Advocates

Court Assistant Judy Maina