



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 2195 OF 2015

PATROBA OJWANG OBONDI.....1ST CLAIMANT

EVANS MORARA MIRUKA.....2ND CLAIMANT

VERSUS

RECEIVERS OF KSC INTERNATIONAL LIMITED

(UNDER RECEIVERSHIP.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 6th March, 2020)

JUDGMENT

The claimants filed the memorandum of claim on 09.12.2015 through Ng'ani & Oluoch Advocates. The respondent file the memorandum of response on 13.02.2019 through Walker Kontos Advocates.

The case came up for hearing on 27.11.2019 and the claimants dropped claim for severance pay and the parties recorded orders thus:

- 1) By consent only issue for determination is whether the claimants at the end of April 2015 resigned without giving notice.
- 2) By further consent a certificate of service to issue in 7 days that last day at work was 05.05.2015.

Counsel for the respondent in his opening remarks at the hearing stated that the respondent's defence was that the claimants worked in April 2015 and resigned by walking away without due one month notice.

The 1st claimant testified that the claimants resigned from employment because the respondent had failed to pay them salaries for the previous 6 months. Arrears of 5 months were paid end of March 2015. As at that time April 2015 was beginning. He testified that he had done a resignation notice but he had not retained a copy. He had no copy of the resignation notice to produce at the hearing. He stated that he had written the letter in March 2015 indicating that he'd leave employment at the end of March 2015. He testified further that he gave the notice towards the end of March 2015. The Court has considered the evidence and returns that the 1st claimant has failed to show that he gave a valid one month termination notice.

The 2nd claimant testified that in early April they were paid 5 months' salary arrears. Like the 1st claimant he resigned on 05.05.2015. The salary for April 2015 was not paid. He testified that his resignation notice was not received and he had not exhibited in Court such notice. He testified that he had given the notice between 20th and 25th March 2015. The notice period was 26 days. He admitted that if he gave the notice as testified then he ought to have left by 20.04.2015 but he had in fact resigned on 05.05.2015. The Court finds that the 2nd claimant has failed to show that he gave the requisite termination notice.

The Court finds that while alleging that they gave the termination notices, the claimants never served a notice that the respondent produces such notices. The Court finds that there is no reason to doubt the respondent's case and evidence that the claimants resigned without giving due termination notice. Thus the Court finds that the respondent was entitled to mitigate its position by withholding the April 2015 salary in lieu of the termination notices.

The Court has considered all circumstances of the case and the consents recorded at the hearing and considers that each party shall bear own costs of the suit.

In conclusion the suit is hereby determined with orders each party to bear own costs of the suit.

Signed, dated and delivered in court at **Nairobi** this **Friday, 6th March, 2020**.

BYRAM ONGAYA

JUDGE