



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 843 OF 2016

PETER OCHIENG OKELLO.....CLAIMANT

VERSUS

METAL TIN MAKERS LTD.....RESPONDENT

JUDGMENT

1. The Claimant filed this suit on 17.5.2016 contending that he was employed by the respondent as a Machine Operator from 5.1.2012 earning Kshs. 14,400 basic pay plus kshs.2160 house allowance per month. He further averred that he worked diligently until the end of December 2015 when company closed down for Christmas holiday and when he reported back on 6.1.2016, his services were terminated verbally on ground that the contract had expired. He therefore seeks the following reliefs: -

- a) A declaration that the Claimant's termination from his employment was unfair, unlawful and unjustified.*
- b) Terminal dues plus compensation for unfair termination totalling to kshs. 444,704.25.*
- c) Certificate of service.*
- d) Fine and penalties of kshs. 100,000.*
- e) Committal to civil jail of Directors Mr. Kuashi K. Shah, R.H.Ngagariya and Mr. Depash for offences committed herein or be condemned to pay fine of kshs.100,000.*
- f) Costs and interest at court rates.*

2. The Respondent never entered appearance after service with summons and the Claim herein and such the suit proceeded by formal proof on 25.7.2019 when the claimant adopted his pleadings and written statement and urged the court to enter judgment as set out above.

3. There is no dispute from the pleadings and evidence that the claimant was employed by the respondent. The issues for determination are:

- a) Whether the claimant was terminated by the respondent or it lapsed by effluxion of time.
- b) If the answer to (a) above is termination, whether it the same was unfair and unjustified.
- c) Whether the claimant is entitled to the reliefs sought.

Whether the contract was terminated or it expired.

4. I have carefully considered the evidence presented and found that the claimant was engaged on fixed term contracts of one year between 1.3.2012 and 31.12.2015. The contract did not provide for any automatic renewal or for procedure for renewal. The last contract provided for the following Clause:

“Your Agreement commences on 1st JANUARY 2015 And will end on 31st DECEMBER 2015.”

5. The foregoing clause from the undisputed contract confirms that the respondent never terminated the contract but it expired automatically after effluxion of time on 31.12.2015. I therefore return that the claimant has failed to prove on a balance of probability that contract was terminated by his employer as alleged in his claim.

Whether it the same was unfair and unjustified.

6. Under section 47(5) of the Employment Act, the burden of proving unfair termination rests on the employee. I have already found herein above that the contract of service for the claimant was not terminated by the respondent but it expired automatically after the end of its fixed term. Consequently, I return that the claimant has not proved unfair termination of the contract as required by section 47 *supra*.

Reliefs

7. In view of the finding, that the claimant's contract expired automatically after effluxion of time, I decline to make declaration that it was unfairly, unjustifiably and unlawfully terminated. Consequently, I return that he is not entitled to salary in lieu of notice and compensation for unfair termination under **Section 49(1)(c) of the Act**.

8. I have also considered the claim for service pay and found that he is not entitled to the same because he was disqualified from the same by section 35(6) of the Act since the respondent had contributed NSSF for him according to the payslips produced. Interestingly one of the payslip indicate that he was paid Service Pay for 2015. The said payslips also showed that the claimant was being paid house allowance .

9. The claim for unpaid paternity leave, salary arrears and house allowance overime and salary for Janaury 2016 lack particulars and supporting evidence and is declined.

10. The claim for fines and or committal to civil jail also lack merits and are decliend for lack of merits and legal basis.

11. Finally, the claim for Certificate of Service is granted.

12. In conclusion, and save for the Certificate of Service, I dismiss the suit with no costs.

Dated,signed and delivered in open court at Nairobi this 29th day of April, 2020.

ONESMUS N. MAKAU

JUDGE