



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAKURU

CAUSE NO.122 OF 2015

SIMON KIPROP MULWOCLAIMANT

VERSUS

VALLEY CONFECTIONARY LIMITED..... RESPONDENT

JUDGEMENT

The claim is based on the facts that the claimant was employed by the respon.dent in May, 2007 and in March/April, 2011 the respondent changed its name from Valley Bakery Limited and retained the claimant as a security guard.

On 30th April, 2012 the personnel manager gave the claimant letter terminating his employment on account of redundancy. At the time he was earning Ksh.8,160.

The claim is that there was no notice issued prior to termination of employment.

That there was unfair termination of employment and no terminal dues were paid.

The claimant was issued was given letters dated 3rd April, 2012 for NSSF contributions, a recommendation letter and Certificate of Service.

The claimant is seeking a declaration and finding that his employment was terminated by dismissal which was unfair and unlawful and hence seek reinstatement and in the alternative the payment of his terminal dues;

- a) Damages for unfair termination of employment;
- b) 3 months' notice pay;
- c) Leave earned for 14 years.

The claimant testified in support of his claims.

That upon employment in the year 2007 there was change of name and in April, 2011 he was employed by the respondent. such employment was unfairly terminated when he was issued with notice of a redundancy and paid Ksh.30,000 in terminal dues which was low as he was entitled to 3 months' notice pay, 14 years of untaken leave days and compensation.

The defence is that the claims made have no basis. There has never been a change of name from Valley Bakery Limited since it was incorporated in the year 2011 and its composition in terms of directors and shareholders is distinct from the entity of Valley bakery Limited. The entity of Valley Bakery Limited and the respondent have different physical address, structures and location of operation and these are two different legal entities.

The defence is also that the respondent employed the claimant as a security guard on 1st May, 2007 until 30th April 2012 when he was rendered redundant.

The claimant was fully paid his terminal dues. there was 30 days' notice issued in accordance with the law. the claims made for work for 14 years have no basis and should be dismissed with costs.

Everlene Gathoni Maina testified that she is the human resource manager of the respondent and the claimant was employed by the respondent on 30th April, 2011 until 31st March, 2012 a period of one year only. The claimant would work for 52 hours a week as a causal for 5 days and paid Ksh.340 per day. The claimant took his annual leave.

The witness also testified that the respondent started operation on 1st May, 2011 upon registration and has no relationship with Valley Bakery Limited. There was no change of name.

The respondent paid statutory dues for the claimant. And following the redundancy there is nothing owing and the claims made should be dismissed with costs.

The claimant filed letter dated 31st March, 2012 the termination of employment notice stating that his last working day would be 30th April, 2012 and employment was being terminated on the grounds that *the company no longer requires your services and the decision to terminate your services do not reflect on your performance.*

In the letter and notice the claimant was advised that he would be paid for days worked up to and including 2nd April, 2012; leave days due for the year 2011/2012 a total of 28 days; and he would proceed on leave with effect from 3rd April, to 30th April, 2012.

Employment hence terminated on account of the claimant's services being found superfluous.

In **Abigael Jepkosgei Yator & another versus China Hanan International Co. Ltd [2018] eKLR** the court held that;

Where there is loss of employment by involuntary means and through no fault of the employee and the employer is therefore forced to terminate employment as the employees services are found to be superfluous, such is regulated in law and under section 40 of the Employment Act, 2007. The employer faced with a redundancy must follow the mandatory provisions of section 40 as otherwise any termination of employment arising thereof is unfair. In

Kenya Union of Domestic Hotels Educational Institutions and Hospital Workers (KUDHEIHA) versus Aga Khan University Hospital

Nairobi [2015] eKLR, the court restated the law and held that *The procedures applicable in a redundancy are ...*

In **Faiza Mayabi versus First Community Bank Limited [2019] eKLR** the court held that;

The second aspect is that the loss of employment in redundancy has to be at no fault of the employee and the termination of employment arises "where the services of an employee are superfluous" through "the practices commonly known as abolition of office, job or occupation and loss of employment. " In this case, what I understand as required to be determined in this aspect of the definition of redundancy is whether the appellant abolished the offices, jobs or occupations of the affected employees resulting in their services being superfluous hence their loss of employment. Corollary to that that is the justification for that abolition, if the appellant indeed abolished their offices. Determination of these two aspects will, determine the first issue of whether or not the redundancy in this case was necessary

It is therefore lawful and permissible that where the employee services are found superfluous, there is notice and the employer complies with the mandatory provisions of section 40 of the Employment Act, 2007 in address the same, there is no unfair termination for the employee laid off and issued with notice terminating employment. The termination of employment has a justification. There is no good case to claim unfair termination of employment.

The claimant testified to the fact that he was issued with notice dated 31st March, 2012 coming into force on 30th April, 2012. He was allowed to proceed on leave. He was also paid ksh.30,000.

Notice having issued, the claim for 3 month pay in lieu of notice does not suffice.

On the claim for leave accrued for 14 years, the claimant was employed by the respondent vide letter dated 30th April, 2011. The claimant attached a Certificate of Service from Valley Bakery Limited indicating he had worked for such entity from 1st May, 2007 to 30th April, 2011.

The defence thus that there were distinct and different entities between Valley Bakery Limited and the respondent stands true. The employment of the claimant with the respondent having commenced vide the written letter on 30th April, 2011 and employment with Valley Bakery Limited having ended vide notice of equal date, employment was under two different entities.

Where the claimant had dues unpaid under the entity of Valley Bakery Limited, nothing stopped him from enjoining such entity herein as a respondent or an interested party so as to secure his rights for the period of employment under such entity.

The claimant having taken his annual leave for 28 days vide notice terminating employment, the termination of employment being lawful, and having been paid a sum of Ksh.30,000 the court finds no outstanding claims unpaid.

Accordingly, the claims made are hereby dismissed. Costs to the respondent.

Dated and delivered electronically this 21st May, 2020 at 0900 hours

M. MBARU JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship the Chief Justice on 15th March, 2020 the Order herein shall be delivered to the parties via emails. this 21st May, 2020 at 0900 hours

M. MBARU JUDGE