



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO 1654 OF 2015

JAMES MWANGI MUIGAI.....CLAIMANT

VERSUS

MURBAN MOVERS.....RESPONDENT

JUDGEMENT

1. The claimant alleged that he was employed by the respondent as station manager from 13th April, 2008 at a monthly salary of USD 300. The respondent was then trading as Kivu Oil. The claimant was initially hired on probation for three months which he successfully completed and was consequently confirmed into employment.
2. As work and responsibilities increased the claimant's salary was enhanced to Kshs 66,100/= for work done under the respondent and USD 600 for work done at outstation in Congo. On 31st July, 2015 the respondent through its human resource manager issued a termination notice citing cutting down costs as the reason for the same. The claimant at the time of termination was earning Kshs 126,100/= per month.
3. The claimant through his counsel engaged the respondent and they agreed on terminal dues payable subject to a claim for wrongful dismissal not being filed but the respondent only made part payment but refused to pay USD 2,508 breaching the agreed terms. The claimant thus contended that the termination was unlawful and wrongful on grounds that it was based on redundancy and cutting costs yet a replacement was hired immediately.
4. The respondent on its part admitted the claimant was its employee under a contract which provided among others that the same could be terminated through resignation by employee or by employee giving notice of termination or payment in lieu. The respondent further stated that the claimant was earning Kshs 66,100/= for work done under the respondent and USD 300 for work done at the out station in Congo.
5. The respondent admitted that the termination was based on the fact that the respondent was not in a position to sustain a manager in the Beni station and this was explained to the claimant in the notice of termination. The respondent further denied the claimant was earning Kshs 126,000/= at the time of termination. The correct amount was Kshs 92,000/=.
6. According to the respondent an issue arose regarding certain debtors and funds that were transferred to SEP Congo all of which the claimant was involved in. The claimant was invited to clear up the issues at the respondent's office before the USD 2,508 could be released to him as per standard company procedure but the claimant never appeared. The respondent therefore affirmed that the sum claimed of

USD 2,508 was therefore set off and or deduction. The respondent further denied the termination was on account of redundancy but was fair as the claimant was given due notice of termination in tandem with clause 10 of the Employment Agreement.

7. In his oral testimony, the claimant further stated that clause 10 of the Employment contract provided for one month's notice of termination or payment in lieu. His duty was to manage the general operations of the petrol station and that he used to sell fuel on credit and follow up on payment. It was further his evidence that some clients had unpaid credit. These were Oxfam and ICCN. It was about USD 6000 and USD 5000 approximately. By the time he left they had not been paid but he followed up until the time he left.

8. The claimant further stated that he earned USD 300 from Kivu Oil and Kshs 40,000 per month from Murban Oil. Murban paid him upon termination but Kivu Oil did not. He was issued with a one month's notice and was paid his terminal dues by Murban Oil. Further he was called by Kivu Oil to go and explain the issue of Oxfam and ICON. He denied Oxfam and ICON were fake accounts. They even part paid the debt. He handed over documents showing there was payment.

9. The respondent's witness Mr Festus Kioko stated that the claimant was his colleague and that he was based in Congo and he (Kioko) was based in Nairobi. The claimant used to send sales and banking reports to Nairobi. He never got any information on the claimant handover. The respondent sent Boniface to Congo but found no record of payment. According to him the station manager was supposed to invoice the client but he did not find any invoice in relation to the two clients. The email account used was fake but not the statement.

10. Only Oxfam email was fake ICCN email was ok. Oxfam denied lifting any fuel from the respondent during the period the claimant alleged. According to him the statement was prepared by the claimant and the claimant was required to produce supporting documents for the balance.

11. The claimant herein was given one month's notice of termination as per his employment contract. According to him upon termination an agreement was reached that his terminal dues amounting to USD 2,508/= be paid to him on account of the outstation in Congo. The payment was to be made in Kenya together with his salary for Kenya office. According to the claimant, he was paid Kshs 244,065.63 by the Kenya Office but the balance of USD 2,508 was not paid by the respondent.

12. The respondent on its part did not deny or refuse to pay the claimant the balance of his terminal dues. The respondent's position was that there were pending issues from DR Congo where the claimant was based at the time of termination which he needed to clarify before the balance of the terminal benefits could be paid. According to the respondent this was a standard company procedure.

13. The claimant did not come clear in his pleadings and evidence about this issue of clearance from Beni station in DR Congo where he was based at the time of his termination. He did not allege or demonstrate that he cleared as required by the respondent yet the latter still refused and or ignored to pay his dues.

14. According to the claimant he was terminated ostensibly on account of cost cutting which according to him was redundancy. An agreement was reached that he would be paid his terminal dues both for DR Congo and Kenya stations on condition that he did not file any claim for unfair termination. As observed earlier, the respondent did not deny liability to pay the agreed terminal dues. The respondent stated that payment was subject to the claimant clearing certain pending issues at Beni station, his last station of service. The claimant did not demonstrate that he cleared or at least attempted to clear yet the respondent still refused and or ignored to pay the balance of his terminal dues.

15. As it were the respondent has not refused to pay the claimant his terminal dues. It has only made clearance a precondition as per the company's procedure. This cannot by any reasonable interpretation be perceived as reneging on the mutual separation agreement between the parties. The claimant cannot therefore put forward a claim for unfair termination where he has himself failed or ignored to clear as per the company's standard exit procedure.

16. In conclusion the court orders that the respondent pays to the claimant the agreed terminal dues after the claimant satisfactorily clears issues at Beni Station where he served prior to separating with the respondent. The claim for unfair termination is therefore found without merit and is hereby dismissed with no order as to costs.

17. It is so ordered.

Dated at Nairobi this 6th day of May, 2020

Abuodha Jorum Nelson

Judge

Delivered this 6th day of May, 2020

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

cnkanjama@yahoo.com

info@mumakanjama.com

samsonkinyanjui@mkattorney.com