



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAKURU

CAUSE NO.29 OF 2015

ALFRED LANGAT.....CLAIMANT

VERSUS

CARZAN FLOWERS (K) LIMITED.....RESPONDENT

JUDGEMENT

The claimant was employed by the respondent on 13th May, 2013 as a security guard and worked until 16th May, 2014 when his employment was terminated.

The claim is that there was unfair termination of employment. On 16th May, 2014 the claimant was called by the human resource manager and informed that his contract of employment had lapsed on the 13th May, 2014 and would not be renewed. The claimant was not under any contract that expired as alleged and this was just but a ploy to terminate employment.

The claimant was paid ksh.5, 445 until February, 2014 when his wage was increased to Ksh.6, 071. There was no annual leave and claim the following terminal dues;

- a) Compensation for unfair termination of employment at Ksh.10,116.15 x 12 = Ksh.121,3939.80;
- b) Notice pay Ksh.10,116.15;
- c) Pay for 16 days worked in May, 2014 Ksh.7,806.40;
- d) Annual leave for 21 days Ksh.7,081.31;
- e) Underpayments ksh.58,845.45; and
- f) Costs of the suit.

The claimant testified that he was employed by the respondent and was working at Rongai, Nakuru County from 13th May, 2013 on a 6 months contract as a security guard at a wage of Ksh.5, 445 per month and which was increased in February, 2014 to ksh.6, 071 paid via the bank. He was paid a house allowance and worked from 6pm to 6am. There was a clocking system and overtime was paid and in a week he had one off day but was not allowed annual leave.

The claimant also testified that on 16th May, 2014 the human resource manager told him his contract had ended and would be recalled for a new contract. The contract ended on 13th May, 2014 but on 16th May, 2014 he was told his contract had ended which was not the case as by such date he was at work and had no contract. The respondent indicated that he was to be recalled for a new contract of permanent basis but the claimant was not satisfied since he had no contract.

The claimant also testified that he was paid for 16 days worked in May, 2014.

The only claims due are for;

Compensation;

Underpayments; and

Leave pay.

The claimant also testified that he signed a contract of employment. This was the only contract he signed. The 2nd contract ended 13th May, 2014.

The defence is that the claimant was employed as a security guard on a 6 months contract from 13th May, 2013 and which was renewed for 6 more months on 16th November, 2013 and ending 16th May, 2014. The human resource manager informed the claimant his contract would not be renewed which is lawful and best practice. There was no requirement for a renewal of the contract.

During his employment the claimant was not diligent and was insubordinate and of abusive language and would leave his place of work unattended, suffered lateness, drunkenness and for which he received several warnings and letters to show cause why his employment should not be terminated. Despite these acts of gross misconduct, the respondent allowed the claimant to complete his term contract.

The claimant went on an off day each week.

The employment having terminated by lapse of contract, the claimant has no standing with the court to urge this claim. The respondent was under no obligation to renew a lapsed contract of employment.

The claims made have no basis, there was no annual leave due, the underpayments claimed are not justified and the claims are without proof and should be dismissed with costs.

The respondent filed work records.

Catherine Wangari Kuria testified that she is the human resource manager with the respondent and in the period of 2014/2015 she was assisting in the same department.

Ms Kuria testified that the respondent firm is based in Rongai and the claimant was employed on contract of 6 months from 13th May, 2013 and then renewed for 6 months from 16th November, 2013 to 16th May, 2014 when it lapsed and was not renewed. There was no obligation to renew. Each employee had a personal card with logs for work attendance and the claimant's last day was 16th May, 2014 and he was paid.

Ms Kuria also testified that after the end of the claimant's contract he did not report back. On 24th May, 2014 the human resource office communicated to him seeking to know his whereabouts as he had not cleared at the end of contract which he later did and certificate of service issued.

The claimant was paid monthly and issued with pay slip and paid through bank account

There is no case of unfair termination of employment as alleged. The claimant was paid in accordance with the Wage orders as the respondent is in Rongai and applied the agricultural sector Wage Orders.

On the claimant's contract he had 2 days of leave each month and where not taken he was paid at month end. The claimant was paid for 12 days in lieu of taking annual leave. In his last pay slip there is leave pay for 24 days.

The Agricultural Employers Association by letter of 12th June, 2014 suggest that the claimant was a permanent employee but such letter is not from the respondent and had not instructed such entity to reply for and on its behalf.

At the end of the hearing both parties filed written submissions.

The employer is the custodian of all work records. The respondent has filed two contracts of employment each for 6 months with regard to the claimant one running from 13th May, 2013 and the other from 16th November, 2013 and ending 16th May, 2014.

The claimant testified he was issued with a 6 months contract and his wage was paid at Ksh.5, 445 per month and was increased in February, 2014 to Ksh.6, 071 per month.

The claimant further testified that he was paid a house allowance; was paid for overtime; he enjoyed one day off each week; and he received pay for 16 days worked in May, 2016. His only claims remain for;

Compensation for unfair termination of employment;

Payment for annual leave; and

Underpayments.

On the contracts of employment filed by the employer, respondent the same have a start and end date. Section 10(3) (c) of the Employment Act, 2007 allow an employer to offer employment on fixed terms;

(c) Where the employment is not intended to be for an indefinite period, the period for which it is expected to continue or, if it is for a fixed term, the date when it is to end;

The contracts issued to the claimant for 6 months each are therefore lawful and ended on their terms. Employment hence ended lawfully and in accordance with the agreed upon terms between the parties. The non-renewal of the fixed term contract does not result in unfair termination of employment under section 43 and 45 of the Employment Act, 2007 to justify a claim for compensation of notice pay.

On the claim for annual leave, section 28(2) of the Employment Act, 2007 provide for payment of 0.75 days of annual leave for every month worked and not exceeding 12 months. Under the 6 months contracts, the claimant had 0.75 of annual leave each month and cumulatively for the 12 months all being 18 days.

The respondent offered 1.92 leave days under the fixed term contract which is a benefit to the claimant.

The claimant admitted he was paid his dues wages for May, 2014. Part of the dues paid to the claimant were leave days at 2 days each month all 24 days. This was a generous payment.

On the claim for underpayments, the respondent is based at Rongai and an agricultural employer. The claimant was member of Kenya Agricultural Workers Union and which has negotiated wages for its members and comprising the Regulation of Wages (Agricultural Industry) (Amendment) Order, 2013 in operation from 1st May, 2013 vide Legal Notice No.196 of 30th July, 2013.

Under the applicable Wage Orders, a security guard wage was Ksh.6, 606 per month basic wage.

On the payment statements filed the claimant was paid a gross wage of Ksh.4, 023 in May, 2013.

However, the claimant testified that he was paid ksh.5, 445 per month and had a house allowance paid. I take his evidence as correct as the pleadings filed also rely on the same figures of Ksh.5, 445 pay per month and thus the underpayment is Ksh.1, 161 per month.

For 10 months the claimant remained on the wage of ksh.5, 445 and total underpayment is Ksh.11, 610.

For the 2 months the wage was increased to 6,071 per month, the Wage orders applicable until 30th April, 2014 at ksh.6,606 the underpayment was Ksh.535 x 2 all Ksh.1,070.

Total underpayment is Ksh.12, 680.

Accordingly, judgement is entered for the claimant and awarded underpayments at ksh.12, 680. Other claims are hereby dismissed. Each party shall bear own costs.

Dated and delivered electronically this 4th June, 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.

Dated and delivered electronically this 4th June, 2020 at 0900 hours

M. MBARU

JUDGE