



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA**

**CAUSE NO 687 OF 2016**

**BONIFACE MWOMBE AMBULWA.....CLAIMANT**

**VS**

**DOSHI & COMPANY (HARDWARE) LIMITED.....1<sup>ST</sup> RESPONDENT**

**DOSHI ENTERPRISES LIMITED.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**Introduction**

1. In his Memorandum of Claim dated 31<sup>st</sup> August 2016 and filed in court on 22<sup>nd</sup> September 2016, the Claimant lists the issues in dispute as wrongful and unfair dismissal and refusal to pay terminal dues.
2. The Respondents' defence to the claim is contained in a Response dated 14<sup>th</sup> November 2016 and filed in court on 15<sup>th</sup> November 2016.
3. The matter proceeded to full trial where the Claimant testified on his own behalf and the Respondents called their Human Resource Manager, Masila Ngungu.

**The Claimant's Case**

4. The Claimant pleads that he was employed by the 2<sup>nd</sup> Respondent as a helper from 28<sup>th</sup> May 2014 until 1<sup>st</sup> July 2016. He adds that in the course of his employment the posters and banners at the factory premises were changed to read the name of the 1<sup>st</sup> Respondent.
5. The Claimant describes the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as sister companies under Doshi Group of Companies.
6. The Claimant claims that he was wrongfully dismissed on 1<sup>st</sup> July 2016 on account of shortage or lack of raw materials. At the time of dismissal, he earned a daily rate of Kshs. 546.
7. The Claimant states that prior to his dismissal, there was no discussion between the Respondent and himself.
8. The Claimant claims that he was not a member of any pension scheme and that he was not allowed to go on leave. He further claims that he was not paid house allowance.
9. The Claimant now claims the following from the Respondent:
  - a) One month's salary in notice pay.....Kshs. 14,196.00
  - b) Unpaid house allowance for 2 years.....55,364.40
  - c) Leave pay for 2 years.....24,766.56
  - d) Travel allowance for 2 years & 2 months.....79,200.00
  - e) Service pay @ 15 days per completed year.....17,690.00

f) 12 months' salary in compensation.....170,352.00

g) Certificate of service

h) Costs plus interest

### **The Respondents' Case**

10. In their Response dated 14<sup>th</sup> November 2016 and filed in court on 15<sup>th</sup> November 2016, the Respondents admit having employed the Claimant initially as a casual and later as a contractual employee.

11. The Respondents avers that for the period 2014 to 2016, the Claimant only worked for 265 days. The Respondents therefore deny that the Claimant worked for them continuously from 28<sup>th</sup> May 2014 to 1<sup>st</sup> July 2016 as alleged in the Memorandum of Claim.

12. The Respondents allege that the Claimant deserted work after his contract expired and did not return to the factory to work. The Respondents deny that the Claimant's employment was unlawfully terminated.

13. The Respondents' case is that the Claimant himself deserted work after his contract expired. They add that the Claimant was offered renewal of his contract but he declined, stating that he had another job at Bamburi.

14. The Respondents aver that the Claimant was a registered member of the National Social Security Fund (NSSF) as a casual labourer and special contributions were remitted on his account.

15. The Respondents further aver that the Claimant was paid house allowance and was given annual leave during his contractual employment.

16. The Respondents maintain that the Claimant was paid all his dues in terms of salary which he voluntarily accepted and acknowledged.

17. The Respondents deny the Claimant's entire claim and ask the Court to dismiss it with costs.

### **Findings and Determination**

18. There are two (2) issues for determination in this case:

a) Whether the Claimant has made out a case of unlawful termination;

b) Whether the Claimant is entitled to the remedies sought.

### **Unlawful Termination?**

19. The Claimant's case is that his employment was unlawfully terminated on 1<sup>st</sup> July 2016 on account of shortage of raw materials. He testified that on 1<sup>st</sup> July 2016, he went to work but was informed by the Head of Department-Copper, Raja Paul that there was no more work for him.

20. The Respondents' Human Resource Manager, Masila Ngungu told the Court that the Claimant's last employment contract lapsed on 30<sup>th</sup> June 2016 and was not renewed.

21. The Claimant himself conceded that after September 2015, he was engaged on short fixed term contracts and that the last such contract came to an end on 30<sup>th</sup> June 2016.

22. In support of their case, the Respondents filed the Claimant's employment contract dated 24<sup>th</sup> March 2016 running from 1<sup>st</sup> April 2016 to 30<sup>th</sup> June 2016.

23. From the evidence on record, it is evident that at the time of his exit from the Respondent's employment, the Claimant served on the basis of a fixed term contract. It is also clear that the Claimant served the entire term of his contract, which was not renewed.

24. The law on termination of fixed term contracts is well settled. In *Bernard Wanjohi Muriuki v Kirinyaga Water and Sanitation Company Limited & another [2012] eKLR* my brother, Rika J stated the following:

***“In the view of the Court, there is no obligation on the part of an employer to give reasons to an employee why a fixed term contract should not be renewed....The only reason that should be given is that the term has come to an end, and no more..... Reasons, beyond effluxion of time, are not necessary in termination of fixed term contracts, unless there is a clause in the contract, for additional justification for the termination.”***

25. This position was affirmed by the Court of Appeal in its decision in *Amatsi Water Services Company Limited v Francis Shire Chachi*

**[2018] eKLR.**

26. In light of this firm jurisprudence, the Claimant's employment, which came to an end by effluxion of time, cannot be said to have been unlawful or unfair. The claims for compensation and notice pay are therefore without merit and are dismissed.

**Other Claims**

27. According to his contract of employment as well as payslips availed by the Respondent, he was paid house allowance. The claim thereon is therefore without basis and is disallowed.

28. The Claimant seeks accrued leave pay and travel allowance. However, having served on successive fixed term contracts, there was no evidence of any accrued dues carried forward. These claims were therefore unproved.

29. Having been a contributing member of NSSF, the Claimant is not entitled to service pay.

30. In the final analysis, the Claimant's entire claim fails and is dismissed.

31. Each party will bear their own costs.

32. Orders accordingly.

**DATED SIGNED AND DELIVERED AT MOMBASA THIS 27<sup>TH</sup> DAY OF JULY 2020**

**LINNET NDOLO**

**JUDGE**

**ORDER**

In view of restrictions in physical court operations occasioned by the COVID-19 Pandemic, this judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of court fees.

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Ganzala h/b for Mr. Mbuya for the Claimant

Miss Nanjani h/b Mr. C.B Gor for the Respondent