



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 597 OF 2016

BETWEEN

MAURICE ODHIAMBO OWINO.....CLAIMANT

VERSUS

1. HABO AGENCIES LIMITED

2. HABO GROUP OF COMPANIES.....RESPONDENTS

Rika J

Chala & Company Advocates for the Claimant

Bosire & Partners Advocates for the Respondents

JUDGMENT

The Claim.

1. Through an Amended Statement of Claim, filed on 23rd October 2017, the Claimant seeks Judgment against the Respondents for: -

- a. 1 month salary in lieu of notice at Kshs. 15,000.
- b. Unpaid house allowance at Kshs. 27,000.
- c. Leave days at Kshs. 12,115.
- d. Unpaid SACCO at Kshs. 3,600.
- e. Unpaid N.S.S.F at Kshs. 2,400.
- f. Unpaid N.H.I.F at Kshs. 7,200.
- g. Unpaid pension at Kshs. 3,600.
- h. Compensation for unlawful termination at Kshs. 180,000.

Total Kshs. 250,915.

2. He avers, he was employed by the Respondents as a Turn Boy on 2nd March 2015, on a monthly salary of Kshs. 15,000. He was summarily dismissed by the Respondents on 27th February 2016. He avers, termination was unfair because he was not given valid reasons justifying termination, and was not fairly heard.

3. He gave his evidence, called a Witness Nahashon Oteli Obed, and rested his Claim on 13th June 2017. He restated his employment history,

and terms and conditions of employment in his oral evidence, as contained in the Statement of Claim, summarized above. He was alongside other Employees, invited to a political meeting by Respondents' Director, a politician named Awiti Bolo, on 26th February 2016. They attended the meeting as their Director's bodyguards. They asked for fare home after attending the meeting. The following day they were informed that they had been dismissed, for having blocked the Director's car at the political gathering. The gathering had nothing to do with the Claimant's job description.

4. The Claimant testified, he seeks house allowance, notice and unremitted statutory dues. SACCO contribution was deducted at Kshs. 300 monthly. N.H.I.F was never remitted. Termination was unjustified. He did not abscond. Other Employees- Charles, Nahashon, Samuel and Adede were also summarily dismissed over the incident.

5. Tested on cross-examination, the Claimant testified, his port pass shows he worked for HABO AGENCIES, while his pay slip shows he worked for HGC- acronym for HABO GROUP OF COMPANIES. He was employed on 2nd March 2015. He was not issued a letter of appointment. He did not know who the Directors of the Respondents are. He did not know Elias Ochieng' or Monica Awiti. He was not invited by either, for any meeting or activity. He does not know that Awiti Bolo is Respondents' Director. The Claimant and his Colleagues did not cause chaos, in their demands for fare. They addressed their demands to Nyali Constituency Development Fund [CDF] Manager. They attended the meeting on the basis of politicking. The Claimant never went back to work. He was advised there was no more work. He was not supplied with a letter of termination. He found the gate closed, when he reported to work. The gate was ordinarily closed. He was assigned Motor Vehicle KAQ 268, and reported at one of Respondents' companies called Benvik. He clarified on redirection that staff of Habo used to report at Benvik. The Employees reported there but were locked out. They were told that they had blocked Awiti Bolo's car at Majengo in Mombasa, the previous day. The political meeting had nothing to do with their job description.

6. Obed confirmed that Employees were taken off their normal duties, to supply their Director Awiti Bolo with guarding services, during the political gathering. The meeting was at Jambo Hotel. At about 11.00 p.m. they asked the CDF Manager for fares to return to their respective abodes. They were told there was no fare. The following day, they were told not to report to work at all. They were locked out when they did so. They were chased away by Security Guards when they reported. Cross-examined, Obed confirmed that they were not issued letters of termination.

The Response: -

7. The Respondents filed their Amended Statement of Response on 14th December 2017. They state, they are different legal entities. The Claimant was not summarily dismissed by the Respondents; he absconded. They state, the Claimant does not merit the reliefs sought.

8. The Parties agreed in Court on 19th February 2020, that the Respondents' Witness Statement of Kennedy Ngei, be adopted as Respondents' evidence. Consequently, there was no oral evidence adduced by the Respondents, and proceedings closed on 19th February 2020.

9. Ngei states, the Respondents are different legal entities. Further, the Claimant failed to adhere to company regulations. The Claimant absconded. The Claim is a waste of judicial time.

The Court Finds: -

10. The evidence given above by the Respondents is wanting. There was no attempt in the Statement filed by Kennedy Ngei, to disclose what he is to the Respondents. He describes himself as a female adult of sound mind. His name suggests he is male. He does not say what he does for the Respondents. He states he is an Employee of the 1st Respondent. He does not say he works for the 1st Respondent in which capacity and what his authority is, to speak for the 2nd Respondent. His Witness Statement is of no value to the Court.

11. This is not to say however, that the Claimant managed to establish his Claim by default. Ultimately it is the responsibility of a Claimant to convince the Court that he merits the reliefs sought. Section 47[5] of the Employment Act, requires that the Employee shows, in a Claim for unfair termination, that unfair termination has taken place.

12. Cross-examined, the Claimant and his Witness Obed, confirmed that they were not issued letters of termination. They attended a political meeting called by their boss Awiti Bolo. It was outside their scope of employment. They state, they attended voluntarily. They were engaged in politicking. They, at about 11.00 p.m. after the meeting ended, demanded for money from the CDF Manager. They were not availed what they described as fare. They did not tell the Court what their reaction to unavailability of the money was. If they are to be believed, they just left and reported to work the following day, only to find themselves locked out. They told the Court that they were advised there was no more work, because they allegedly blocked Awiti Bolo's vehicle at the end of the political meeting, once denied their stipends. In all likelihood, they engaged their boss in some kind of altercation, having been denied their appearance fee at the meeting called by Awiti Bolo. They allowed themselves to be used by their politician boss. When there occurred a fallout of a political nature, the Claimant rushed to Court, seeking unlikely remedies against his boss Awiti Bolo. He was mistaken to engage in activities outside the scope of his employment contract. He did not establish that he was summarily dismissed by any of the Respondents. The Claimant stated on cross-examination that he did not ever go back to work after the political gathering. He at the same time stated he found the gate closed, when he reported back. He disclosed that the gate was ordinarily closed. There is no letter of termination, or evidence of a lockout. The Claimant has not established unfair termination.

13. The prayers for notice, compensation, house allowance, SACCO and statutory refunds, have not been established.

IT IS ORDERED: -

a. The Claim is declined.

b. No order on the costs.

Dated, signed and released to the Parties under Ministry of Health and Judiciary Covid-19 Guidelines, at Chaka, Nyeri County, this 28th day of August 2020.

James Rika

Judge