



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT ELDORET

CAUSE NO 121 OF 2017

STEPHEN ISINGA AMULIODO.....CLAIMANT

VERSUS

EASTERN PRODUCE KENYA LTD (CHEMONI TEA ESTATE)..RESPONDENT

JUDGEMENT

1. The claimant pleaded that he was at all material times employed by the respondent as a tee plucker on renewable contract terms of 9 months. The monthly salary varied depending on the quantity of tea picked in Kilograms. The more the kilograms picked the more the salary. At the time of his termination, his monthly salary was Kshs 11,616/= excluding house allowance. According to him he served the respondent with dedication until 31st? December, 2016 when his contract was terminated without any lawful reason.

2. According to him the main reason for the termination was the filing of Kapsabet PMCC No. 221 of 2016 against the respondent seeking compensation for injury he sustained while lawfully on duty at the respondent's company. The claimant alleged that he was never afforded a fair hearing before the termination. He was further not given a chance to call witnesses in his defence.

3. The claimant thus sought a declaration that his termination was unfair and an order for compensation for unlawful termination of service.

4. The respondent on its part averred that the claimant served diligently until 31st? December, 2016 when his contract expired. The respondent denied any malice or ill-will in the termination and avers that the contract of service had expired by effluxion of time and there was neither malice nor ill will on the part of the respondent.

5. The respondent further averred that the claimant was not entitled to the claims itemized in the plaint and that the respondent paid the claimant all his dues at a rate above the minimum wage for the term of his contracts. The respondent also contributed to NHIF and NSSF for the claimant.

6. In his oral testimony, the claimant stated that he used to work for the respondent as a tea plucker and that he was employed in 2010 and worked until 2015. His monthly salary was between Kshs 10,000 and Kshs 20,000. The claimant further stated that he was terminated because he filed a personal injury claim in Kapsabet Court. He further stated that he had no work related problems and was never issued with any termination notice. It was his evidence that he was on fixed term contract and that his contract had not expired at the time of termination. It was to expire on 31st? December, 2016.

He was not paid his terminal dues upon termination.

7. In cross-examination he stated that he did not have the 2010 -2015 contracts. He only had contract for 2016. It was starting on 8th? August, 2016 and expiring on 31st? December, 2016. It was his evidence that he was injured in 2016 June and that his contract was renewed after the injury. He further stated that he did not have the details of the personal injury case at Kapsabet. The claimant also stated that he was a casual worker and that his contract specified hours per week.

He however did not have a checklist for overtime.

8. The respondent's witness Mr Charles Arogo stated that he was working for the respondent as a supervisor. According to him the claimant was employed on a fixed term contract. His last contract from 8th? October 2016 to 31st? December, 2016. The contract expired and that renewal of contract was dependent upon availability of work. He further stated that the claimant was paid his December, 2016 salary and produced the December payslip in support.

9. In cross-examination he stated that he was not aware if the claimant was issued with notice of termination. It was not disputed that the claimant was the respondent's employee. The claimant produced his NSSF statement showing he was employed from May, 2010. According to the respondent, the claimant's last contract was to run from 8th October, 2016 to 31st December, 2016. Further the contracts produced by the claimant and the respondent showed that the claimant was hired on a fixed term basis.

10. The claimant alleged that he was terminated because he filed a personal injury claim against the respondent at Kapsabet seeking compensation for injuries he sustained in the course of his work. The claimant however never attached copies of the pleading in Kapsabet case to vouch for the allegation. According to the respondent, the claimant's contract expired and there was no obligation to renew the same and that renewal was subject to availability of work. This position was not seriously contradicted by the claimant.

11. Counsel for the claimant submitted in this regard that the termination was not in accordance with the Employment Act since the claimant was never given reasons for failure to renew his contract. According to Counsel, the fact that the claimant was employed in 2010 gave him expectation that his contract would be renewed as the respondent had not questioned his work performance or his conduct at work.

12. This court and my brother's and sister judges sitting in the same Court have ruled that non-renewal of a fixed term contract does not constitute unfair termination of service. In the case of *Isaiah? Makokha Vs Bosco Products (K) Ltd* 2014 eKLR Justice? Radido observed that the legal position in Kenya is unlike the position in South Africa where under section 186(b) of South Africa's Labour Relations Act, non-renewal of a fixed term contract can be challenged under unfair dismissal regime. I concur with the position taken by the learned Judge and dismiss as lacking in merit the claim for unfair termination of the claimant's contract by reason of non renewal of his fixed term contract.

13. In conclusion the claim is found lacking in merit and is hereby dismissed with costs.

Dated at Nairobi this 23rd day of October, 2020

Abuodha Jorum Nelson

Judge

Delivered this 23rd day of October, 2020

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge