



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT AT MOMBASA

CAUSE NUMBER 263 OF 2014

BETWEEN

JACOB ADERA OBANGOCLAIMANT

VERSUS

MOMBASA SHIPPING AGENT CO. LIMITED RESPONDENT

Rika J

C.A. Andrew Mwabanga

A.I. Hayanga & Associates, Advocates for the Claimant

Nyambura Kamau Advocates, for the Respondent

JUDGMENT

1. This Claim was lodged way back in 2014, when this Court was known as the Industrial Court.
2. The Claimant states, he was employed by the Respondent as a Deck-Hand Crew, on 22nd July 2013. His salary was 250 USD monthly.
3. He reported for duty on 29th July 2013 after successfully going through medical examination at the Coast General Hospital.
4. He was paid part of his August 2013 salary. He was required to work in Yemen. On reaching the Port of Sheri in Yemen, the Respondent instructed the Claimant to board a flight back to Kenya. He arrived in Kenya on 31st October 2013.
5. Back in Mombasa, he was required to undergo a second medical examination. He did so, again at Coast General Hospital, and was given a clean bill of health. However, the Respondent through its agent, disputed the medical report.
6. The Respondent demanded that the Claimant undergoes through a third medical examination at Vision Medical Laboratory. The Claimant declined on the ground that he had twice been medically examined.
7. He was advised by the Respondent that because of his refusal, his contract had been terminated. He feels and prays the Court to find that termination was wrongful. He prays for Judgment against the Respondent for: -
 - a. 1-month salary in lieu of notice.
 - b. 12 months' salary in damages for wrongful termination.
 - c. Any other relief.
 - d. Costs.

8. The Respondent did not file Response to the Claim. Hearing proceeded *ex parte*, on 25th November 2019, when the Claimant gave evidence, and rested his case. In his evidence the Claimant restated the contents of his Pleadings, adding that he was in Yemen, a warzone, and expected to be paid hardship allowance. He also testified that he should have been earning 50 USD per day. This rate was obtained from a friend of the Claimant, who worked for another shipping company in Yemen.

The Court Finds: -

9. The Claimant was employed by the Respondent as a Deck Crew, on a monthly salary of 250 USD. He signed a contract dated 22nd July 2013. He left employment 4 months later, in November 2013, after the Parties disagreed on the Claimant's medical fitness, to continue sailing.

10. Although he states that he was asked to attend a third medical examination at Vision Medical Laboratory, and that he declined the instruction, leading to termination, he exhibits a Medical Certificate from Vision Medical Laboratory. The Certificate is dated 5th November 2013. It is indicated that the Claimant had Hepatitis B.

11. Back to the contract, clause 5 required that the Employee should not have certain medical conditions, which included Hepatitis B.

12. The Court does not think that the Claimant satisfied the requirement of medical fitness, to serve as a Sailor.

13. He exhibits a Medical Report from the Coast General Hospital dated 16th January 2014, which indicates diagnosis of PTB. The specimen taken was sputum, which would suggest that PTB, refers to diagnosis of Pulmonary Tuberculosis. PTB in medical terms refers to Pulmonary Tuberculosis. This again was a health condition the Claimant was not supposed to be ailing from, under clause 5 of his contract.

14. The Claimant does not appear to have been confirmed as a Deck Crew. He was asked to provide evidence of medical fitness. The Medical Institutions he attended, as borne out in his own documents, did not give him a clean bill of health. He was not fit to sail. If he did sail to Yemen, it was premature. He had not met the terms and conditions of his contract.

15. Barring medical issues, the Claimant complains that he should have been paid 50 USD per day. He learnt he should have been paid this, from a friend in Yemen. The friend worked for another company. The terms and conditions of employment, applicable to his friend, were not relevant to the contract between the Parties herein. There was no provision for hardship allowance in the Claimant's contract. The Claimant in any event has not pleaded for underpayment of salary or for hardship allowance.

16. The Claim has no foundation.

IT IS ORDERED: -

a. The Claim is declined.

b. No order on the costs.

Dated and delivered at Mombasa this 6th day of October 2020

James Rika

Judge