



**REPUBLIC OF KENYA**

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

**CAUSE NO 230 OF 2016**

**RANDA ALI CHARO.....CLAIMANT**

**VS**

**RILEY SERVICES LIMITED.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. Before me is an employment dispute between Randa Ali Charo and his former employer, Riley Services Limited.
2. The Claimant's claim is by way of a Memorandum of Claim dated 8<sup>th</sup> February 2016 and filed in court on 29<sup>th</sup> March 2016. The Respondent filed a Statement of Response on 9<sup>th</sup> March 2017.
3. The matter proceeded to full trial where the Claimant testified on his own behalf. The Respondent called its Mombasa Branch Manager, William Winga. Both parties filed written submissions.

**The Claimant's Case**

4. The Claimant states that he was employed by the Respondent as a Security Guard from 26<sup>th</sup> December 2014 until 23<sup>rd</sup> February 2015. He claims to have retained continuous and uninterrupted employment, though employed on casual basis.
5. At the time of leaving employment, the Claimant earned a monthly salary of Kshs. 14,000.
6. The Claimant states that on 23<sup>rd</sup> February 2015, he approached the Respondent's Manager, Peter Ogeto inquiring about payment of his January and February salary which was yet to be effected.
7. The Claimant adds that instead of responding to the inquiry, the Manager asked the Claimant to immediately take off the company uniform, leave the premises and never return.
8. The Claimant therefore claims that his employment was unlawfully and unfairly terminated as no reason was given for it and he was not allowed an opportunity to be heard.
9. The Claimant avers that the Respondent did not remit all his National Social Security Fund (NSSF) dues as required. He further avers that he was not allowed to go on annual leave and did not take a rest day.
10. The Claimant's claim against the Respondent is as follows:
  - a) One month's salary in lieu of notice.....Kshs. 14,000
  - b) Outstanding pay for entire period of employment.....28,000
  - c) 12 months' salary in compensation.....168,000
  - d) Certificate of service
  - e) Costs plus interest

## **The Respondent's Case**

11. In its Statement of Response dated 8<sup>th</sup> March 2017 and filed in court on 9<sup>th</sup> March 2017, the Respondent admits having employed the Claimant but on a fixed term contract for one year commencing 26<sup>th</sup> December 2014.
12. The Respondent states that the Claimant stopped attending work suddenly on 23<sup>rd</sup> February 2015.
13. The Respondent further states that it pleaded with the Claimant to return to work but he declined. The Respondent waited until May 2015 and decided to summarily dismiss the Claimant on the basis of abscondment. The Claimant was given a right of appeal which he did not exercise.
14. The Respondent adds that the Claimant's dues, less one month's pay in lieu of notice, were prepared and the Claimant informed to collect the same together with a Certificate of Service but he declined.
15. The Respondent goes on to state that settlement was reached at the Labour Office, by which the Claimant was to be paid salary for two months but he declined.

## **Findings and Determination**

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

- a) Whether the Claimant has made out a case of unlawful termination of employment;
- b) Whether the Claimant is entitled to the remedies sought.

## **Unlawful Termination?**

17. The Claimant states that his employment was terminated on 23<sup>rd</sup> February 2015 after he had inquired about his unpaid salary for the months of January and February 2015.
18. While admitting that the said salary was not paid, the Respondent states that the lapse was occasioned by the Claimant's failure to submit crucial documents namely; KRA PIN, NSSF and NHIF cards, KCSE Certificate and Certificate of Good Conduct.
19. The parties disagreed on the actual reason for withholding of the Claimant's salary for close to two months. They however presented themselves for conciliation at the Labour Office and the Claimant told the Court that in the month of May 2015, the Respondent asked him to go back to work but he declined because he had a case against the Respondent. The Claimant was emphatic that he was no longer interested in working for the Respondent.
20. In its decision in *Dexter Muye Mwangombe v Mombasa Go-Kart-Garimeli Limited [2019] eKLR* this Court held that an employee who, without any good cause, turns down an offer of re-employment from an employer cannot lay a claim for unfair termination against the same employer.
21. The reason for this is that the remedies provided under the Employment Act are compensatory in nature, whose purpose is to cushion the employee against the vagaries of unfair termination of employment. If an employer offers to right its wrong by offering to re-employ the employee and the employee unilaterally rejects the offer, the employer's wrong is atoned and the employee has no further recourse in law.
22. In this case, the Claimant threw away the offer for re-employment and he did not tell the Court why he chose to do so. For this reason, his claims for compensation and notice pay must fail.

## **Other Remedies**

23. The claim for outstanding pay for the entire period of service was admitted and is payable.
24. The Respondent, having failed to file a counterclaim for notice pay cannot be allowed to recover any such claim from the Claimant's outstanding salary.
25. In the end, I enter judgment in favour of the Claimant in the sum of **Kshs. 28,000** being salary for January and February 2015.
26. This amount will attract interest at court rates from the date of judgment until payment in full.
27. The Claimant is also entitled to a Certificate of Service.
28. Each party will bear their own costs.
29. Orders accordingly.

**DATED SIGNED AND DELIVERED AT MOMBASA THIS 17<sup>TH</sup> DAY OF DECEMBER 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

Mr. Burugu for the Respondent