



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT AT NAIROBI

CAUSE NUMBER 1813 OF 2014

BETWEEN

LABAN OKWACH OTHIENOCLAIMANT

VERSUS

METAL CROWNS LIMITEDRESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Omwakwe & Associates, Advocates for the Claimant

Kabue Thumi & Company, Advocates for the Respondent

JUDGMENT

1. The Claimant filed his Statement of Claim on 13th November 2014. He states he was employed by the Respondent Company as a Supervisor on 1st March 2005, on a monthly salary of Kshs. 50,000. He alleges that his contract was unfairly terminated by the Respondent. Respondent's Director, Guldip Singh, was driven by pure racism, the Claimant asserts. The Claimant states that the Court must save Kenyans from racial discrimination by cancelling Singh's work permit. The main prayers are listed as follows:-

- a) 12 months' salary in lieu of notice at Kshs. 600,000.
- b) 12 months' salary in compensation for disturbance at Kshs. 600,000.
- c) Payment for annual leave of 12 months notice.
- d) Payment for salary in arrears for the months the Claimant has been out of employment to a date to be determined by the Court.
- e) Severance pay for 8 years at Kshs. 400,000.
- f) Full settlement of loan guaranteed by the Respondent at Kshs. 276,283.
- g) Full settlement of accumulated interest.
- h) Compensation for damages suffered by the Claimant from the time of this wrongful and unlawful retirement.
- i) Respondent's Director's work permit is revoked.
- j) Costs.
- k) Interest.
- l) Any other suitable remedy.

2. The Respondent filed its Statement of Response on 19th December 2014. It is denied that the Claimant's contract was terminated on the basis of his race. The allegation is scandalous. Termination was lawful. The Claimant was regularly warned over poor performance. He did not change, compelling the Respondent to terminate his contract. The Respondent did not guarantee any loan facility extended to the Claimant by his bank. The Respondent was only requested to confirm that the Claimant was an Employee of the Respondent, and eligible for the loan. The Respondent urges the Court to find that the Claim is scandalous and vexatious, and dismiss the same, with costs to the Respondent.

3. The Claimant, and the Respondent's Human Resource Manager John Mulama Onyere, both gave evidence on 19th October 2018. The Cause was last mentioned before the Deputy Registrar at Nairobi on 5th November 2018.

4. The Claimant restated the contents of his Pleadings, in his oral evidence. He was told by Guldip Singh that he was not working properly in his shift. Termination letter followed. He was issued Certificate of Service. Human Resource Manager issued the letter of termination. There was no explanation. The letter states reason was improper management by the Claimant, of the shift group placed under his supervision. He had received warning for sleeping at work. The Claimant was advised that his terminal dues were paid to his account with the Barclays Bank. He had a loan with Barclays Bank.

5. John Mulama Onyere confirmed that the Claimant was employed by the Respondent as pleaded in the Statement of Claim. It is true that his contract was terminated by the Respondent. The Claimant was warned severally for sleeping at work. He was given a chance to explain himself before termination. He was paid terminal dues through Barclays Bank. Cross-examined, the Witness conceded that the Claimant was not subjected to a disciplinary hearing.

The Court Finds:-

6. It is not disputed that the Claimant was employed by the Respondent as a Supervisor. The particulars, terms and conditions of service are not disputed. It is agreed that his contract was terminated by the Respondent.

7. There are several orders sought by the Claimant against the Respondent, which must be rejected at the outset.

The prayer for 12 months' salary in lieu of notice is grossly misconceived, unsupported in law and evidence, and is declined.

12 months' salary for disturbance? This prayer is without judicial precedence, and is not based on any law, contractual clause or known wage instruments. It is thrown out.

Payment of annual leave for 12 months of notice? It is not at all clear to the Court what the Claimant intends to ask of the Court, through this prayer. It is rejected.

The Claimant ceased to be an Employee of the Respondent on the date of termination. Why does he wish to be paid arrears of salary from the date of termination, to a date to be determined by the Court? The prayer is without foundation and is declined.

The Claimant did not leave employment on redundancy. He is not entitled to severance pay under Section 40 of the Employment Act 2007. If he intended to pursue service pay, rather than severance pay, he is not eligible for service pay, having been actively subscribed to the N.S.S.F.

There is no evidence establishing that the Respondent guaranteed any loan to the Claimant. There are no documents exhibited before the Court showing details of this guarantee. There is no merit in the prayers for settlement of loan amount, and accrued interest, by the Respondent. The Claimant ought to carry his debt burden alone.

The record does not show that the Claimant was retired. The prayer for damages for unlawful retirement is groundless.

The Work Permit issued to Guldip Singh, is a matter between Guldip Singh and the issuing authorities. Cancellation of the permit is not a remedy availed by the law to the Claimant for unfair termination. Allegations about racism are mere allegations, told by an Employee who was not happy after losing his job. There is absolutely no proof of racism.

8. The real issues in dispute are whether Claimant's contract was terminated fairly; and whether he merits remedies given under the Employment Act for unfair termination.

9. Termination, going by the evidence given by the Respondent, was based on poor performance. It is alleged that the Claimant did not supervise his shift properly. It was also alleged that the Claimant was found sleeping at work on several occasions, a habit which was punished through warning letters. Sleeping at work was not the reason given for termination. Poor performance was the sole reason.

10. There is no evidence showing that the Claimant did not carry out his supervisory role well. There is no record of appraisal. Guldip Singh, who made the allegation, did not give evidence in Court. The Human Resource Manager, Onyere, concentrated his evidence on explaining about Claimant's sleeping habit. He did not expound the ground relating to improper supervision by the Claimant, of his shift. In fact, Onyere said nothing about shifts and improper supervision.

11. Termination was substantively unfair.

12. Onyere conceded that the Claimant was not given a disciplinary hearing.
13. Termination was unfair on account of procedure.
14. Termination was unfair under Sections 41, 43 and 45 of the Employment Act 2007.
15. The Claimant did not plead his case with clarity, and with the seriousness befitting employment litigation. He appears to have gone out of his way to besmirch and threaten his former Employer. His grievances and possible remedies became obscured by the profligacy of his Pleadings. The Court was left struggling to place its finger on the actual grievance and avail a remedy.
16. ***He is allowed 3 months' salary in compensation for unfair termination at Kshs. 150,000 and 1month salary in lieu of notice, at Kshs. 50,000 amounting to Kshs. 200,000.***
17. ***No order on the costs.***
18. ***Interest allowed at 14% per annum from the date of Judgment till payment is made in full.***

IN SUM, IT IS ORDERED: -

- a) Termination was unfair.***
- b) The Respondent shall pay to the Claimant, equivalent of 3 months' salary in compensation for unfair termination at Kshs. 150,000 and 1 month salary in lieu of notice at Kshs. 50,000- total Kshs. 200,000.***
- c) No order on the costs.***
- d) Interest allowed at 14% per annum from the date of Judgment till payment is made in full.***

Dated and signed at Mombasa this 5th day of February, 2019.

James Rika

Judge

Dated, signed and delivered at Nairobi this this 15th day of February, 2019.

Maureen Onyango

Principal Judge