



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO.1985 OF 2014

(Originally Nairobi Chief Magistrates Court Civil Case No. 869 of 2013)

SEVEN SEAS TECHNOLOGY LTD.....CLAIMANT

V

ERIC CHEGE.....RESPONDENT

JUDGMENT

1. Seven Seas Technology Ltd (Claimant) offered Eric Chege (Respondent) employment as a Software Engineer through a letter dated 15 September 2010.

2. Clause 4 of the appointment letter provided as follows

4. EMPLOYEE TRAINING AGREEMENT

a).

b) The Company may opt to provide training to you that is relevant to your work and that will improve the level of your qualification in line with the career road map discussed and agreed with your line manager/supervisor, including all college, exam, institute subscription fees, related travel, per diem and accommodation costs SUBJECT to the condition that you continue in this employment for at least Two years (2) subsequent to each specific training you receive.

c) If your employment contract with the Company is terminated howsoever (except by death or retirement or as a result of re-organisation by the Company) within Two years (2) after attending Training sponsored by the Company, then you shall pay to the Company a liquidated sum equal to the actual out of pocket expenses incurred and aided by the Company for your training as reduced by one twenty-fourth (1/24) of the training cost for every complete calendar month between the date of the training and the date of your termination of employment.

3. From around 19 November 2011 to 26 November 2011, the Claimant sponsored the Respondent to undergo training in the United Arab Emirates.

4. On 1 February 2012, within 2 or so months after the training, the Respondent resigned with immediate effect.

5. The Claimant was of the view that the Respondent was in breach of contract and it instituted legal proceedings against him on 22 February 2013 alleging breach of contract and seeking a total of Kshs 519,927/-, being the equivalent of 1 month pay in lieu of notice and reimbursement of the training expenses.

6. The Cause was heard on 12 February 2019. A director of the Claimant and the Respondent testified after which the Claimant filed its submissions on 27 February 2019. The Respondent's submissions were filed on 20 March 2019.

7. The Court has considered the pleadings, evidence and submissions on record.

Pay in lieu of notice

8. Clause 6 of the contract provided for termination by the giving of 1 month written notice or pay in lieu of notice.

9. The Respondent admitted in cross examination that he did not give the requisite notice.

10. The Court therefore finds that the Claimant was in breach of contract in respect to notice period, and therefore liable to the Claimant in the sum of Kshs 40,000/- being the equivalent of 1 month salary, in lieu of notice.

Training bond

11. The Respondent admitted that under the terms and conditions of service, he was under a 2 year bond and that he resigned before completing the 2 year bond period.

12. The Respondent also admitted, and filed extract from his passport to show that he was in Dubai for training from 19 November to 25 November 2011.

13. According to the Claimant, the Respondent having resigned before the lapse of 2 year bond was liable to reimburse to it the cost incurred in the course of training in Dubai.

14. Apart from producing a ledger detailing what were said to be *per diems, cost of air tickets, change of reservations, cash advance and visa expenses*, the Claimant did not produce any receipts or acknowledgements to demonstrate that the costs were *actually incurred*.

15. The Claimant urged that the *ledger*, being a record kept in the normal course of business was sufficient proof of the costs incurred on training the Respondent. The Claimant submitted that the *ledger* satisfied the requirements of section 33(b) of the Evidence Act.

16. The Respondent did not rebut the case of the Claimant on the sufficiency of the *ledger* to demonstrate the costs incurred but urged in his submissions that the ledger was irregular because it did not have the author's name, any signature, dates or Claimant's logo.

17. The Respondent also contended that the training did not benefit him but the Claimant and therefore he should not be held to be in breach of contract.

18. What is paramount in the view of the Court is that the Respondent admitted going to Dubai for training and that he did not deny it was at the expense of the Claimant.

19. The *ledger*, secondary evidence being an extract prepared in the normal of course of business, in the view of the Court met the standard of proof placed upon the Claimant.

20. The Court will therefore find that the Respondent was in breach of the contractual provision on training/bonding and being in breach of contract was liable to the Claimant in the sum of Kshs 492,126/-.

Conclusion and Orders

21. The Court finds and declares that the Respondent was in breach of contract and awards the Claimant

22. The Claimant is awarded

(a) Pay in lieu of notice Kshs 40,000/-

(b) Training expenses Kshs 492,126/-

TOTAL Kshs 532,126/-

23. Claimant to have costs.

Delivered, dated and signed in Nairobi on this 22nd day of March 2019.

Radido Stephen

Judge

Appearances

For Claimant Ms. Lwila instructed by Majanja Luseno & Co. Advocates

For Respondent Mr. Njagi instructed by Gitonga Kinyanjui & Co. Advocates

Court Assistant Lindsey