



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 598 OF 2017

BETWEEN

- 1. OSIELO OKOTH OKING**
- 2. STEPHEN M. MULINGE**
- 3. HARRY RANDU BANKS**
- 4. JUMA WAZIRI KINGICLAIMANTS**

VERSUS

A CLAIM IN REM AGAINST THE OWNERS
OF MOTOR VESSEL NASIBU, NASIBU
FISHING COMPANY LIMITED.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Wachira King'ang'ai & Company Advocates for the Claimants

Hassan Abdi Advocates for the Respondent

JUDGMENT

1. The Claimants are Sailors, who were engaged by the Respondent on 17th August 2016, as Crew in Respondent's ship. They were engaged as Captain, Chief Engineer, 2nd Engineer and 3rd Engineer respectively. They were to be paid monthly salaries at USD 500, USD 350, USD 300 and USD 250 respectively.
2. They sailed to Kismayu in Somalia on 24th August 2017. They were paid their salaries while there, for September 2017, by the ship's agent, one Abdulqadir Fadhe. On 10th October 2017 the ship was loaded with cargo, and was ready to sail back to Mombasa.
3. At Kilifi in Kenya, the crew stopped to refuel. They were all arrested by the Kenyan Police. They were alleged to be terrorists and charged at the Court in Kilifi, in SPMC Criminal Case Number 389 of 2016. The Owner of the ship abandoned the Claimants upon their arrest. The Owner of the cargo came to their rescue by arranging for bail, food and water for the Claimants. They remained on board the ship until 20th February 2017 when the criminal case was terminated. The Owner of the ship did not at any time communicate with the Claimants, or offer them help in any form.
4. The Claimants aver that the Respondent breached their contracts of employment by failing to pay them salaries, failing to provide food,

water and basic utilities, abandoning the ship while it broke down, and by abandoning the crew altogether.

5. They seek arrears of salary from October 2016 to March 2017 calculated at USD 3,000, USD 2,100, USD 1,800 and USD 1,500 respectively, all added up at USD 8,400. They pray for damages for breach of contract and for costs and interest.

6. The Respondent filed its Statement of Response on 13th September 2017. Its position is that the Claimants were not in Respondent's ship. They were in another ship. The Respondent states if the Claimants were arrested and charged, it was as a result of the wrongful and illegal actions of the Owner of the cargo. The Respondent did not have any obligation to pay Claimants any salaries. The Respondent prays that the Claim is dismissed with costs to the Respondent.

7. The 3rd Claimant, Harry Randu gave evidence on 10th December 2018. He narrated how the Claimants were engaged by the Respondent; their voyage to Kismayu; their arrest and being charged on terrorism-related allegations while at Kilifi; and their abandonment by the Respondent while at sea, and in Court. He told the Court that the Claimants' salaries remained unpaid from October 2016 to March 2017. The other Claimants filed Witness Statements, which replicate the oral evidence given by Randu.

8. The hearing date was taken in Court by Advocates for both Parties. Hearing was scheduled for 10th December 2018. The Respondent and its Advocate did not attend Court on the hearing date. The hearing closed on 10th December 2018.

The Court Finds:-

9. There is ample evidence to establish that the Claimants were employed by the Respondent as crew in the Respondent's ship, on 17th August 2016.

10. They sailed to Kismayu in Somalia on 24th August 2016. They were to ship undisclosed cargo for a trader named Jamal Bandira.

11. They made their return voyage in October 2016. They were only paid salaries for September 2016, while still at Kismayu. When they arrived at Kilifi in Kenya, their ship stopped. It is not clear from the Claimants' explanation if the ship broke down, or simply ran out of fuel. It nonetheless was stalled at Kilifi.

12. The Kenyan Police suspected the Claimants of being engaged in terrorism. The Claimants were apprehended, and charged at the SPMC Kilifi. They were bailed out upon the intervention of Jamal Bandira. For the duration of the trial, they operated from their ship, at Kilifi.

13. The Respondent abandoned the Claimants. They were not paid their salaries, and no food or water was availed to the Claimants by the Respondent. They only received assistance from Jamal Bandira. Their Employer was nowhere to be found.

14. Eventually the criminal trial ended in Claimants' acquittal on 20th February 2017. The ship was released and proceeded to Mombasa Port where Jamal Bandira received his cargo. The Respondent declined to pick Claimants' calls and did not pay them anything.

15. The Claimants left ship, and approached the Court for assistance in recovering what is due to them.

16. The Court has heard them, and agrees that they are owed arrears of salary by the Respondent, in the amount of USD 8,400.

17. It clear also, that the Claimants were employed by the Respondent. They are not shown to have been in any other ship as alleged by the Respondent, other than Nasibu. The circumstances, in which the Claimants found themselves in, are well recorded in the proceedings of the Criminal Court at Kilifi. The proceedings are part of the exhibits availed to the Court by the Claimants.

18. The Respondent acted in breach of contract, by refusing to pay Claimants their salaries, and by abandoning them at sea, and in Court.

19. ***They are granted arrears of salary at a total of USD 8,400.***

20. ***They are granted general damages for breach of contract at USD 1000 each, total USD 4,000.***

21. ***Costs to the Claimants.***

22. ***Interest allowed at 14% per annum from the date of Judgment, till payment is made in full.***

IN SUM, IT IS ORDERED: -

a) The Respondent shall pay to the Claimants arrears of salary at USD 8,400 and general damages for breach of contract at USD 4,000- total USD 12,400.

b) Costs to the Claimants.

c) Interest allowed at 14% per annum from the date of Judgment till payment is made in full.

Dated and delivered at Mombasa this 15th day of March 2019.

James Rika

Judge