



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 661 OF 2014

BENJAMIN MUTUA MUNYWOKI.....CLAIMANT

VERSUS

ANDY FORWARDERS SERVICES LIMITED.....RESPONDENT

JUDGMENT

1. The claimant averred that he was employed by the respondent on two contracts. The first contract between 6th May, 2003 and 31st December, 2012. The second employment between 1st January, 2013 and 24th January, 2013. The claimant was employed as a driver picking staff from their various homes. His schedule started at 5.00 a.m. to 8 p.m. daily. His monthly salary was Kshs. 48,232/= per month.
2. On 24th December, 2012, the claimed was suddenly served with a letter of termination. The letter retired him from employment. According to him he was surprised because it was the first time he heard about the respondent's retirement policy. According to him the policy should have been brought to his attention to enable him prepare.
3. Upon termination the respondent failed or refused to furnish him with tabulated terminal benefits and to pay him the same.
4. In January, 2013 the respondent hired the claimant once again for one year with effect from 1st January, 2013. However on 24th January, 2013 he was asked by the respondent's human resource officer to return the original letter for rectification. When he returned the letter the same was replaced with a letter of 24th January, 2013 terminating his services. According to him the termination was without reasonable cause and no notice was given.
5. The respondent on its part pleaded that the claimant's contract dated 6th May, 2003 came to an end upon the claimant attaining retirement age of 60 years on 31st December, 2012.
6. The respondent averred further that it wanted to issue the claimant with a further contract for one year but the offer was withdrawn on grounds that the claimant's usual acuity had not been corrected as recommended by the respondent's medical provider and also that the claimant exhibited negative behaviour that would have jeopardised the respondent's operations.
7. The respondent therefore denied that it terminated the claimant's service but rather that his contract came to an end due to natural attrition when the claimant attained 60 years.
8. Respondent further averred that the claimant was at all times aware of the retirement age as the same was part of the terms of his employment contained in the respondent's RBA deed under the normal retirement date hence he could not plead ignorance of the same.
9. It is not in dispute that the claimant was employed on 6th May, 2003 as per the letter of appointment attached to his memorandum of claim. By a letter dated 20th December, 2012 the respondent notified the claimant of intention to retire him upon attainment of 60 years which fell on 31st December, 2012. The respondent however offered him a renewable contract with effect from January, 2013 which the claimant accepted and signed on 11th January, 2013. However by a letter dated 24th January, 2013 the respondent recalled the renewable contract and informed him that the management had decided not to grant him an annual contract.
10. Retirement is a life changing event. It means the employee concerned has reached an age where his productivity may not reasonably meet the demands of the organization. The claimant's letter of appointment does not make provision for retirement age. This however did not mean he could not be retired. The claimant cannot therefore contend that he was unaware of the retirement age. No one works indefinitely. The respondent's rejoinder that the claimant was aware of the retirement age since it was part of the terms and conditions of the claimant's employment contained in the RBA deed is therefore plausible.
11. The court however takes issue of the notice of retirement which was issued to the claimant only ten days to the date of retirement. As

much as it was the company's policy that employees retire at sixty years, a reasonable notice should be issued to such employee to enable them prepare for retirement. Ten days was therefore unreasonable in the circumstances but the court will not fault the respondent for this since the RBA deed was clear that normal retirement age was 60 years.

12. The respondent however issued the claimant with a one year renewable contract with effect from 1st January, 2013. The letter of appointment had an acceptance clause which required the claimant to sign to signify that he accepted the offer as contained in the letter and agreed with the terms thereof. The claimant signed the letter on 11th January, 2013.

13. By a letter dated 24th January, 2013 the respondent purported to recall the letter. The letter in the face of it did not provide any reason why it was recalled. All it stated was that the management had decided not to grant the claimant an annual contract. Although the respondent pleaded that the reason for recalling the annual appointment was because the claimant's visual acuity had not been corrected as recommended by the respondent's medical provider and also that the claimant exhibited negative behaviour, no evidence was tender to vouch for this. Secondly, the respondent did not state whose responsibility it was to have the claimant's visual acuity rectified.

14. The one year contract issued to the claimant and which he accepted on 11th January, 2013 constituted a binding contract between the parties which could only be brought to an end following the termination clause therein and in accordance with section 45 (2) of the Employment Act. That is to say apart from issuing the claimant with a month's notice, the respondent was obliged to furnish the claimant with the reason for the termination and afford him an opportunity to react to those reasons before the termination is done. This did not happen in this case.

15. The court therefore inevitably reaches the conclusion that the termination of the claimant's contract issued on 1st January, 2013 was for invalid reasons and was terminated through unfair procedure.

16. The court therefore awards the claimant as follows:-

Kshs.

- a) One month salary in lieu of notice 48,232

- b) Six months salary as compensation

- for unfair termination of service 289,392

337,624

c) Costs of the suit.

17. Items (a) and (b) shall attract taxes and statutory deductions but shall bear interest at court rates from the date of Judgment until payment in full.

18. It is so ordered.

Dated at Nairobi this 24th day of May, 2019

Abuodha J. N.

Judge

Delivered this 24th day of May, 2019

Abuodha J. N.

Judge

In the presence of:-

..... for the Claimant and

..... for the Respondent