



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

CAUSE NO 725 OF 2017

CHARO VOI WANJE.....CLAIMANT

VS

HAKIKA TRANSPORT SERVICES LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. Charo Voi Wanje, the Claimant in this case was an employee of Hakika Transport Services Limited, serving in the position of Truck Driver. He brought his claim by way of a Memorandum of Claim dated 7th September 2017. The Respondent filed a Response and Counterclaim on 9th November 2017 to which the Claimant responded on 29th November 2017.

2. At the trial, the Claimant testified on his own behalf and the Respondent called its Human Resource Manager, Rajab Yeri Kombe. The parties subsequently filed written submissions.

The Claimant's Case

3. The Claimant states that he was employed by the Respondent as a Truck Driver from 14th June 2006 until 4th March 2015. He earned a monthly salary of Kshs. 18,300.

4. The Claimant avers that on 4th March 2015, he reported to work as usual on which date his employment was terminated verbally. He claims that the termination was unlawful and unfair and now claims the following:

- a) 1 month's salary in lieu of notice.....Kshs. 18,300
- b) Leave pay for 9 years.....115,290
- c) Service pay @ 15 days' pay for every completed year.....82,350
- d) Overtime worked for 9 years.....147,744
- e) 12 months' salary in compensation
- f) Certificate of service
- g) Costs plus interest

The Respondent's Case

5. In its Response and Counterclaim dated 9th November 2017 and filed in court on even date, the Respondent admits that the Claimant was its employee but denies that his employment was terminated. The Respondent states that the Claimant voluntarily resigned from employment on 31st March 2015.

6. The Respondent further states that the Claimant's resignation was in breach of Section 38(c) of the Employment Act in that he did not give the statutory notice period. The Respondent therefore makes a counterclaim against the Claimant in the sum of Kshs. 18,300 being one month's salary in lieu of notice.

7. With regard to the claim for service pay, the Respondent states that the Claimant was a contributing member of the National Social Security Fund (NSSF). The Respondent adds that the Claimant enjoyed all statutory and contractual benefits due to him, including annual leave.

8. The Respondent therefore maintains that the Claimant's claim is without basis.

Findings and Determination

9. In his Memorandum of Claim and written witness statement, the Claimant states that his employment was unlawfully terminated. He however testified before the Court that he in fact voluntarily resigned from employment. He further told the Court that he was a contributing member of NSSF.

10. The Claimant therefore abandoned the prayers for compensation, notice pay and service pay. This leaves only the claims for leave pay and overtime compensation for determination by the Court.

11. On the claim for leave pay I have this to say; under Sections 10 and 74 of the Employment Act, the Respondent was under a duty to produce records to show that the Claimant had indeed utilized his leave days. However, as submitted by Counsel for the Respondent, this particular claim was ousted by limitation of time under Section 90 of the Employment Act.

12. The claim for overtime compensation was not proved and is dismissed.

13. By way of counterclaim the Respondent seeks one month's salary in lieu of notice. The Respondent's Human Resource Manager, Rajab Yeri Kombe however told the Court that the Claimant only worked when there was a vessel for offloading at the Port. Having taken this position, the Respondent cannot now claim notice pay as if the Claimant worked throughout. For this reason, the Respondent's counterclaim against the Claimant fails and is dismissed.

14. In the end, both the Claimant's claim and the Respondent's counterclaim fail and are dismissed.

15. Each party will bear their own costs.

16. Orders accordingly.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 2ND DAY OF MAY 2019

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JUDGE

Appearance:

Mr. Ngonze for the Claimant

Mr. Onyango for the Respondent