



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO 731 OF 2017

JOSEPH MUKHWANA MASINDE.....CLAIMANT

VS

HAKIKA TRANSPORT SERVICES LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. The Claimant filed his Memorandum of Claim on 7th September 2017 seeking compensation for wrongful and unfair dismissal, as well as release of terminal benefits. The Respondent filed a Response on 9th November 2017 to which the Claimant responded on 29th November 2017.
2. The matter came up for hearing on 14th January 2019, with the Claimant testifying on his own behalf and Rajab Yeri Kombe for the Respondent. Both parties further filed written submissions.

The Claimant's Case

3. The Claimant states that he was employed by the Respondent on 2nd June 2014 in the position of Tractor Driver. He earned a monthly salary of Kshs. 18,300. He worked as such until 4th March 2015, when his employment was terminated.
4. The Claimant claims that the termination of his employment 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 1 year.....12,810
- c) Service pay for 1 year of service.....9,150
- d) Overtime worked for 1 year.....16,416
- e) 12 months' salary in compensation
- f) Certificate of service
- g) Costs plus interest

The Respondent's Case

5. In its Response dated 9th November 2017 and filed in court on even date, the Respondent admits having employed the Claimant but denies the allegations of unlawful termination of employment.
6. The Respondent states that the Claimant absconded duty after declining to attend a disciplinary meeting. His employment was therefore terminated. The Respondent adds that pursuant to a complaint lodged by the Claimant with the Ministry of Labour and Social Protection, his claim was resolved and fully settled. The Respondent therefore avers that this matter is *res judicata*.

7. The Respondent further avers that the Claimant enjoyed and utilised all statutory and contractual benefits due to him.

Findings and Determination

8. The first issue for determination in this case is whether the Claimant's claim is properly before the Court in light of settlement agreement dated 1st December 2015. On 22nd March 2015, the Respondent issued the Claimant with a show cause letter citing accusations of gross misconduct. By the same letter, the Claimant was required to appear before the Staff Advisory Committee on 3rd March 2015. According to the Claimant's termination letter dated 6th March 2015, he failed to appear before the Staff Advisory Committee.

9. Following the termination, the Claimant and 6 of his colleagues, through the Kenya Long Distance Truck Drivers and Allied Workers Union, lodged a complaint with the Ministry of Labour, Social Security and Services. The appointed Conciliator, J.K Katana issued a report dated 2nd November 2015. Thereafter, a settlement agreement dated 1st December 2015 was signed on behalf of the Respondent's management and the affected employees, including the Claimant. A union representative also signed the agreement, which was witnessed by the Conciliator.

10. By the settlement agreement, the parties agreed on the following dues:

- a) Leave @ 18 months as per Employment Act, 2007;
- b) 2 months' salary in compensation;
- c) One month's salary as notice pay;
- d) Overtime: pending production of employment records;
- e) Public holidays: subject to production of records.

11. The parties were conflicted with regard to steps taken to satisfy the settlement agreement. It was however agreed between the Claimant and the Respondent's Human Resource Manager, Rajab Yeri Kombe that after the settlement agreement, the Claimant was only paid prorata leave.

12. In the final submissions filed on behalf of the Respondent on 18th March 2019, an attempt was made to renege on the settlement agreement. No valid grounds for this move, such as fraud or misrepresentation, were given and the Court refuses to accompany the Respondent on this futile journey. The parties must be held to the agreement reached and executed on 1st December 2015.

13. Jurisprudence emerging from this Court is to the effect that barring manifest miscarriage of justice or contravention of the Constitution or written law, parties to a conciliation process are bound by its outcome, (see *Elizabeth Wanjiru Njogu v Kangei Nyakinyua Building Co. Ltd (Cause No 385 of 2011)*, *Wario Gorise v Vicky Kabetu (Director, Muthithi Plantation Estate) [2013] eKLR* and *Kenya Shoe and Leather Workers Union v Modern Soap Factory [2018] eKLR*).

14. In the case now before me, nothing in the conciliation process, culminating with the settlement agreement dated 1st December 2015 suggests any miscarriage of justification or violation of the Constitution or the law.

15. The Court therefore finds and holds that the parties are bound by the said settlement agreement by which the Claimant is entitled to the following:

- a) Prorata leave for the period worked;
- b) 2 months' salary in compensation;
- c) 1 month's salary in lieu of notice.

16. From the evidence on record, the claim for prorata leave was settled at the conclusion of the conciliation process. I therefore enter judgment in favour of the Claimant as follows:

- a) 2 months' salary in compensation.....Kshs.36,600
- b) 1 month's salary in lieu of notice.....18,300
- Total.....54,900**

17. This amount will attract interest at court rates from the date of judgment until payment in full.

18. The Claimant will have the costs of the case.

19. 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