



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR

RELATIONS COURT AT MOMBASA

CAUSE NUMBER 744 of 2015

BETWEEN

VITALIS NDEGE OUYO.....CLAIMANT

VERSUS

K.K. SECURITY GROUP OF COMPANIES.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Mwaure & Mwaure Waihiga, Advocates for the Claimant

Ms. Beatrice Opolo Advocate, instructed by the Federation of Kenya Employers [FKE], for the Respondent

JUDGMENT

1. The Claimant filed his Statement of Claim on 2nd October 2015. He states he was employed by the Respondent Company, as a Security Guard, on 2nd March 1996. His contract was terminated without notice or valid reason by the Respondent on 14th November 2014, he states. His last salary was Kshs. 12,549 monthly. He seeks Judgment against the Respondent in the following terms:-

- a) 1 month salary in lieu of notice at Kshs. 12,549.
- b) Unpaid annual leave for 2013 and 2014 at Kshs. 20,286.
- c) Public holidays for 19 years at Kshs. 183,540.
- d) 12 months' salary in compensation for unfair termination at Kshs. 150,588.

Total...Kshs. 366,963.

- e) Declaration that termination was unfair.
- f) Costs.
- g) Interest.
- h) Any other relief.

2. The Respondent filed its Statement of Response on 13th November 2015. Its position is that the Claimant was employed by the

Respondent as a Security Guard, as stated in the Claim. His contract was not terminated on the instigation of the Respondent. On 13th November 2014, he informed the Respondent that he had been diagnosed with high blood pressure. He presented a medical report from a Doctor Luke Odiero, advising that the Claimant is retired on medical ground. The Respondent wrote to the Claimant on 14th November 2014 acknowledging Claimant's application for retirement. The Claimant was retired on medical ground. His terminal dues were tabulated and found to amount to a negative sum of Kshs. 180,114. He took annual leave, including for 2013 and 2014. He was paid for any overtime worked. The Respondent prays the Court to dismiss the Claim with costs.

3. The Claimant gave evidence and rested his case, on 27th October 2018. Respondent's Human Resource Assistant, Angeline Kerubo, gave evidence on the same date, bringing the hearing to an end. The Cause was last mentioned on 6th March 2019 when Parties confirmed the filing of their Submissions.

4. The Claimant denied that he ever suffered high blood pressure. He did not present to the Respondent any medical evidence with a request that he is retired on medical ground. He was at the time of giving evidence, working without any health challenges, for another Employer. He never saw Dr. Odiero. He had a loan of Kshs. 150,000 which he was servicing at the rate of Kshs. 10,000 monthly. The balance could not have been Kshs. 270,000 as claimed by the Respondent, by the time of termination. Cross-examined, the Claimant reiterated that he did not write to the Respondent asking to be retired. He conceded that his loan was earning interest. He did not write to the Sacco asking for exemption from payment of loan interest. He admitted he went on annual leave, including for the year 2013 and 2014. He conceded also that he was compensated for work performed on public holidays.

5. Angeline Kerubo affirmed that indeed the Claimant asked to be retired on medical ground. He presented the medical evidence on record in support of his request. The Respondent accepted his request. His terminal dues were computed and found to result in a negative sum of Kshs. 180,114. He was paid service up to 2011. After 2011 he was on a Pension Scheme. Cross-examined, Kerubo told the Court she did not have a document showing how much loan the Claimant had repaid, by the time of termination. She did not personally deal with the matter, but relied on Claimant's employment record.

The Court Finds: -

6. The Claimant is not a truthful Witness.

7. He pleads unpaid leave and public holiday pay. In his evidence he stated that he seeks public holidays' pay. He conceded that he used to go on annual leave. Pressed in cross-examination, he alleged he did not recall when he went on annual leave. He then told the Court he went for annual leave in 2013 and 2014. He conceded he was compensated for work done during public holidays. This shifting evidence by the Claimant did his credibility no good at all.

8. It is difficult to believe him when he denies writing the letter dated 13th November 2014, requesting for retirement on medical ground. There are comments made on the letter by Respondent's Management Staff, indicating not only that the letter was served and received, but in addition, there was consultation among Respondent's Officers, before decision to retire the Claimant was made. There was a formal retirement process. The Court does not think the Respondent would manufacture such a document and proceed to make comments indicated on the face of the letter. Harder to accept is that the Respondent would come up with a letter from a Doctor Odiero, stating that the Claimant had high blood pressure, requiring he is retired on medical ground. The Claimant had worked for over 18 years. Kerubo told the Court that the Parties had a good, cordial employment relationship. The Claimant did not have any warnings in his employment file. Why would the Respondent suddenly desire to get rid of the Claimant? Why would the Respondent craft such a harebrained scheme, complete with falsified medical records, to get rid of the Claimant? The Claimant's evidence is simply unbelievable and unacceptable.

9. His Claim as a whole is unacceptable. It was presented probably upon realization, that he was leaving employment after 18 years, with negative terminal benefits.

IT IS ORDERED:-

a) The Claim is dismissed.

b) No order on the costs.

Dated and delivered at Mombasa this 21st day of June, 2019.

James Rika

Judge