



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA
CAUSE NUMBER 800 OF 2015
BETWEEN
STEPHEN MAGANGA SHUNGULA.....CLAIMANT
VERSUS
RIFT VALLEY RAILWAYS [KENYA] LIMITED.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Stephen Oddiaga & Company Advocates for the Claimant

Ochieng' Onyango Kibet & Ohaga Advocates for the Respondent

JUDGMENT

1. The Claimant is a former Employee of the Respondent. He worked for the Respondent for 8 years, and for Respondent's Successor, Kenya Railways Corporation, for 20 years. He was a Foreman, Yard Operations. His last salary was Kshs. 47,160.

2. He avers in his Statement of Claim filed on 28th October 2015, that on 29th October 2014, the Respondent issued him a notice of retrenchment. In a separate letter of the same date, titled 'terminal dues and release letter,' the Respondent gave details of Claimant's terminal dues at Kshs. 900,300.

3. He alleges that payment was grossly understated. He was not involved in computation of the package. He avers that other stakeholders, whose identity is undisclosed by the Claimant, were not involved. He was not paid overtime, and was not compensated for holidays worked. His prayers against the Respondent are:-

- a. Severance pay for 8 years at Kshs. 943,200 -less paid at Kshs. 377,280- balance at Kshs. 565,920.
- b. Overtime worked for the period 2012 to 2014 at Kshs. 364,704.
- c. Compensation for unfair termination equivalent of 12 months' salary at Kshs. 565,920

Total...Kshs. 1,496,544

d. Declaration that termination was unlawful.

e. The Court to order the Respondent to supply any information required by the Court to facilitate this Claim.

f. Certificate of Service to issue.

g. Costs.

h. Interest.

3. The Respondent filed its Statement of Response on 21st March 2016. Its position is that the Claim is a nullity and presented in bad faith. It is conceded that the Claimant was employed by the Respondent. His contract was terminated fairly and lawfully in a redundancy process. His Trade Union was involved. He was paid alongside other affected Employees, fair redundancy package. Neither him, nor his Trade Union contested the process of redundancy or the package. His claims for overtime and holiday pay are time-barred and misguided.

4. The Claimant gave evidence and rested his case, on 22nd October 2018. The Respondent, although aware of the hearing date, did not participate in the hearing. Respondent's case was ordered closed on 28th October 2018.

5. The Claimant adopted in his evidence, his Statement of Claim, Witness Statement, and Documents on record.

6. The Cause was last mentioned on 23rd March 2019, when the Claimant confirmed filing of his Submissions.

The Court Finds:-

7. There is on record a letter exhibited by both Parties, dated 29th October 2014, referenced, 'Retrenchment Terminal Dues & Release Letter.'

8. The letter is signed by the Claimant and Respondent's Chief Human Resources Officer, Helen Mbugua. It was agreed between the Parties, *inter alia*, that:-

- The Claimant had gone through the computation of his package owed to him by the Respondent under the retrenchment program.
- The Claimant confirmed computation was correct.
- Payment of subsistence allowance and overtime worked, where applicable would be paid less any outstanding liabilities to the Respondent.
- The Claimant acknowledged his employment would end immediately as advised in the letter of termination.
- The Claimant would keep confidential, any confidential information belonging to the Respondent, gained in the course of employment, after leaving employment.
- The Claimant acknowledged that the agreement shall inure to the benefit of and be binding upon the Parties, their respective Heirs, Successors and Beneficiaries.

9. This agreement does not support the position of the Claimant that he was subjected to an unfair redundancy process. The agreement discloses that the Parties had been in continuous communication prior to redundancy. There was consultation. The Claimant was paid severance, leave, off-days and notice, which is in consonance with Section 40 of the Employment Act.

10. The agreement left room for claim on overtime worked. It states that payment of subsistence allowance and overtime worked where applicable will be paid. The Respondent's Human Resources Policies and Procedures Manual, under clause 6.2, allowed for payment of overtime. The Claimant has provided Overtime Timesheets, in support of his prayer for overtime.

11. Unfortunately the figure of Kshs. 364,704 claimed as overtime is not supported by the Timesheets. The Claimant has not tallied the hours shown under the Timesheets, to the figure of Kshs. 364,704 or 116 days claimed as overtime. His mode of computation, resulting in the amount of Kshs. 364,704 is undisclosed. Furthermore clause 6.2 of the Manual requires that overtime worked is authorized in advance by the Supervisor. The Timesheets must be approved by the Head of Department.

12. None of the Timesheets exhibited by the Claimant is signed by the Immediate Supervisor, Senior Supervisor or the Regional Human Resources Officer.

14. In sum, the Claimant has not established any of his prayers, save the prayer for the Certificate of Service., which is allowed under Section 51 of the Employment Act.

IT IS ORDERED: -

a. The Respondent shall release to the Claimant his Certificate of Service forthwith.

b. No order on the costs.

Dated and delivered at Mombasa this 20th day of June, 2019.

James Rika

Judge