



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NUMBER 952 OF 2016

BETWEEN

KARISA MODY AKIBA.....CLAIMANT

VERSUS

CORRUGATED SHEETS LTD.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

C.A. Odhiang & Company Advocates for the Claimant

Onyony & Company Advocates for the Respondent

JUDGMENT

1. The Claimant filed his Statement of Claim on 14th December 2016. He states, he was employed by the Respondent as a Weighbridge Clerk, on 27th November 2012. He was paid a daily wage of Kshs. 683. He states, his contract was unfairly terminated by the Respondent on 22nd July 2015. He prays for Judgment against the Respondent in the following terms:-

- a) Public holidays of 10 days at Kshs. 6,830.
- b) 90 days of annual leave at Kshs. 61,470.
- c) Unpaid salary from July 2015 to December 2016, at Kshs. 319,644

Total.....Kshs. 387,944

- d) Declaration that the Claimant is paid his salary for July 2015 – December 2016.
- e) Declaration that he ought to have been confirmed in permanent employment.
- f) Compensation equivalent to 12 months' salary.
- g) Costs
- h) Interest.

2. The Respondent filed its Statement of Response on 20th February 2016. The Claimant's contract was not terminated by the Respondent. He was never issued termination or dismissal letter. He deserted. The Respondent prays that the Claim is dismissed with costs.

3. The Claimant and the Personnel Officer of the Respondent Jason Laibuta, gave evidence on 29th October 2018. They repeated what is contained in their Pleadings and Documents on record.

The Court Finds:-

4. There is evidence to confirm that the Claimant was employed by the Respondent from 27th November 2012 to 22nd July 2015, as a Weighbridge Clerk.

5. There is no evidence that his contract was terminated by the Respondent. After the Claimant wrote demand letter to the Respondent before filing the Claim, the Respondent replied, stating it did not terminate Claimant's contract, and the Claimant was at liberty to report back to work.

6. The position was confirmed by the Witness for the Respondent during the hearing.

7. The Court gave parties some time at the end of the hearing, for the parties to negotiate terms of the Claimant's resumption of duties.

8. On 22nd November 2018, the Respondent told the Court the Claimant had declined the offer to resume duty, while the Claimant sought more time to negotiate.

9. The Claim was mentioned on 7th February 2019, 21st March 2019 and 20th June 2019. There was no settlement. The Court reserved its Judgment for 27th September 2019.

10. There is no evidence at all, that termination was instigated by the Respondent. The Claimant did not discharge his burden of proof under Section 47(5) of the Employment Act. The Respondent cannot be asked to justify termination, and pay notice and compensation to the Claimant.

11. Even had the Claimant demonstrated termination was instigated by the Respondent, and that termination was unfair, the Respondent offered him the remedy of reinstatement upon receiving Claimant's demand letter. The Claimant was offered full restitution, which nullified his continued demand for terminal benefits and compensation for unfair termination.

12. The Court is satisfied that this Claim is meritless. ***It is rejected with no order on the costs.***

Dated and delivered at Mombasa this 31st day of July 2019.

James Rika

Judge