



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 242 OF 2016

BETWEEN

YASSIR FARAJ SAID.....CLAIMANT

VERSUS

BAJABER HAULIERS LIMITED..... RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

IRB Mbuya & Company Advocates for the Claimant

Sherman Nyongesa & Mutubia Advocates for the Respondent

JUDGMENT

1. The Claimant filed his Statement of Claim on 29th March 2016. He avers, he was employed by the Respondent as a Mechanic, in early March 2004, and left on 1st June 2015. His last salary was Kshs. 15,000 monthly.
2. He alleges his contract was unfairly terminated by the Respondent, with no other explanation, other than that the Respondent was transferring the Claimant to another Company. There was no hearing preceding termination.
3. He prays for Judgment against the Respondent for:-
 - a) 1 month salary in lieu of notice at Kshs. 15,000.
 - b) Annual leave for period of employment at Kshs. 135,207.
 - c) Unpaid travel allowance at Kshs. 13,200.
 - d) 12 months' salary in compensation for unfair termination at Kshs. 180,000.
 - e) Certificate of Service.
 - f) Any other suitable order.
 - g) Costs.
 - h) Interest.
4. The Respondent filed its Statement of Response on 8th August 2016. Its position is that it did not employ the Claimant. It could not have

terminated his contract. The Claimant was employed by another Company called Kitui Flour Mills Limited. The Claim is meritless and should be dismissed with cost.

5. The Claimant gave evidence on 6th February 2019. Salim Mutua Wambua, a Human Resource Clerk employed by Kitui Flour Mills, gave evidence for the Respondent on the same date, closing the hearing. The Claim was last mentioned on 14th June 2019 when Parties confirmed filing of their Submissions.

6. The Claimant adopted his Pleadings, Witness Statement and Documents, in his testimony. He explained that he was transferred by the Respondent from its premises at Mikindani, to Kitui Flour Mills located at Majengo, in Mombasa. He was not an Employee of Kitui Flour Mills.

7. Cross-examined, the Claimant confirmed that he initially worked at Respondent's premises. He was transferred to Kitui Flour Mills. He was fixing metal equipment at Kitui Flour Mills. He was binding construction beams. He was told not to report to work by the Foreman Geoffrey. The Foreman was not paying Claimant's salary. Binding of beams was not Claimant's ordinary line of duty. He used to go on annual leave. He seeks travel allowance to cover the period of leave. No other Employees were transferred to Kitui Flour Mills. He earned the same salary as last earned at the Respondent. Redirected, the Claimant clarified that what he seeks is commuter allowance to compensate him for his journeys to Kitui Flour Mills, some greater distance from his residence, than was while he worked at the Respondent's Mikindani site.

8. Wambua told the Court he worked with the Claimant at the Respondent. The 2 Companies are owned by the same person. Work at the Respondent diminished. The Claimant was reassigned work at Kitui Flour Mills. He disagreed with an Employee of Kitui Flour Mills, Geoffrey, and left. Geoffrey was a Mechanic himself, without authority to terminate Claimant's contract. The Respondent did not terminate Claimant's contract.

9. Cross-examined, the Witness testified that he did not have documents to show how the 2 Companies are related. The Claimant did not last 1 month at Kitui Flour Mills.

The Court Finds:-

10. Nothing much turns on the question whether the Claimant was employed by the Respondent, or by a Company called Kitui Flour Mills Limited.

11. The 2 Companies, were part of the same business, as clearly stated in the letter of transfer dated 20th May 2015. The letter informed the Claimant that he was transferred to the Mother Company, Kitui Flour Mills. His terms and conditions of service were to remain the same upon transfer.

12. There is no evidence in terms of Section 47(5) of the Employment Act, proving that the Claimant was unfairly dismissed by the Respondent.

13. He states, he was asked by the Foreman Geoffrey to shop working. Geoffrey was not his Employer. Geoffrey was a fellow Mechanic, who served also, as a Foreman. He did not have instructions or any form of authority, to terminate Claimant's contract.

14. The Claimant did not consult his actual Employer on the alleged termination. He relied on the word of a fellow Mechanic, and stayed away from work. He was not issued any letter of termination by either the Respondent or Kitui Flour Mills. It is noted that transfer was communicated in writing.

15. The Claimant does not merit notice pay and compensation for unfair termination.

16. He told the Court that he used to go on annual leave. His prayer for outstanding leave computed at Kshs. 135,207 is declined. He has not shown the Court any contract, wage instrument or provision of the law, granting to him travel allowance. The prayer is rejected.

17. *The prayer for Certificate of Service is allowed under Section 51 of the Employment Act 2007.*

18. *No order on the costs.*

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 30th day of July 2019.

James Rika

Judge