



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAKURU

CAUSE NO.233 OF 2017

GEOFFREY BISERA.....CLAIMANT

VERSUS

MUTSIMOTO MOTOR CO. LIMITED.....RESPONDENT

JUDGEMENT

The claimant was employed by the respondent in December, 2015 for a period of 1 year and 3 months and issued with letter to this effect. his wage was ksh.11,554.00 per month until January, 2016 which was increased to ksh.12,617.00 per month from January, 2017 and until his employment was terminated on 24th March, 2017.

On 24th March, 2017 the claimant reported to work at 8am until 3pm when he was summoned by Mr Alexander Muthira the human resource officer and was informed his employment had been terminated immediately. The reasons given were that his work performance was unsatisfactory. Prior to this date the claimant had been issued with letter dated 3rd March, 2016 confirming his performance review was satisfactory.

By letter dated 14th October, 2016 the claimant was informed that his contract was due to expire on 30th November, 2016. The claimant continued at work until he was issued with letter terminating his employment. He was only paid Ksh.3, 410.00 on 31st march, 2017 as terminal dues.

The claimant was unfairly terminated contrary to the law and claim compensation under section 49 of the Employment Act, 2007. He also claims the following dues;

Notice pay Ksh.12, 617.00;

Pro rata leave for 3 months Ksh.2, 547.60;

Leave travelling allowance Ksh.4, 000.00;

Compensation ksh.151, 404.00; and

Costs and interests.

The claimant testified in support of his claims.

In defence the respondent has denied all the claims made and without prejudice avers that there were no instructions to the human resource officer to terminate employment as alleged with regard to poor performance or any letter issued confirming good performance reviews. There was no unfair termination of employment.

The defence is also that The claimant was employed by the respondent from 6th January, 2016 on probation and which ended on 4th April, 2016 with an option to extend the same. The claimant was earning ksh.13, 287.00 as at 30th November, 2016.

Employment was confirmed on 24th March, 2016 and contract of employment offered to run from 4th April, 2016 to 30th November, 2016. The respondent sent an end of contract notice giving emphasis to the claimant that his contract would end on 30th November, 2016 and there was no extension of its term. The claimant was paid ksh.15, 213.00 in terminal dues.

On 3rd January, 2017 the claimant as offered a new contract of employment for the period from 3rd February, 2017 to 3rd April, 2017 with

the option to extend the same. His wage was Ksh.12, 617.00 per month. The respondent was not satisfied with the work performance as the claimant failed to follow the laid down procedures and repeatedly damaged equipment's and which led to loss of production for a week. The contract was therefore terminated during probation with effect from 24th March, 2017 to 30th March, 2017 and was paid final dues all at Ksh.21, 571.00.

The defence is also that the respondent followed the terms of the contract and issued notice as agreed. The claimant was paid his full terminal benefits and what is claimed in notice, leave; travelling allowances and compensation are not due.

Geoffrey Chege the human resource manager testified in support of the defence. The claimant was employed under written contract and under the last he was not successful during probation and was issued with termination notice and paid his dues. the claimant was given work he ordinarily should have done without much supervisor as he had done similar work before, he was required to fit a filter and adjust it to ensure it operated properly as his role was that of an automated machine operator but he damaged it leading to loss and damage to the respondent. since he was on his third month of probation, the respondent did not issue contract in confirmation and terminated employment with effect from 31st March, 2017 upon notice issued on 24th March, 2017. All terminal dues were paid. Nothing owes.

Both parties filed written submissions.

The court has put into account the written submissions and the issues which emerge for determination are;

Whether there was unfair termination of employment; and

Whether the remedies sought are due.

In the Memorandum of claim, the claimant has attached his letter of appointment dated 15th December, 2015 where the respondent offered him employment from 4th January, 2016 at a machine attendant and to be on probation until 4th April, 2016. This contract defined the claimant's employment with the respondent.

The respondent has attached further work records with regard to the claimant. Such includes letter dated 21st March, 2016 confirming his employment following letter of appointment dated 15th December, 2015. The employment was confirmed until 30th November, 2016. A pay statement is attached for November, 2016 setting out the dues paid. There is approval for annual leave taken in September, 2016.

Vide letter dated 14th October, 2016 the respondent notified the claimant that his contract would end on 30th November, 2016. Final dues were paid under the ended contract all being ksh.15, 213.93. a certificate of service was issued and dated 30th November, 2016.

Employment terminated on the agreed terms.

By letter dated 3rd January, 2017 the claimant was appointed by the respondent as a machine attendant and put on probation ending 3rd April, 2017. Clause 2 of the contract set out the terms and conditions of probation.

By letter dated 13th March, 2017 the claimant was issued with first warning by the respondent on the grounds that on 3rd March, 2017 he fitted the 3085 seaming chuck without following the procedure and which resulted in damage of machine shaft. He again fitted 3065 seaming chuck wrongly and damaged the chuck. The machine was taken out of production for a week to be repaired. Upon investigations the management was concerned with the claimant's negligence and the loss of work for a week.

By letter dated 21st March, 2017 the respondent notified the claimant that his probation was unsuccessful and hence his final date at work would be 31st March, 2017. He was paid final dues and a certificate of service issued and dated 24th March, 2017.

Fixed term employment contract is permissible and lawful and in accordance with section 10(3) of the Employment Act, 2007. Upon the end of each contract, there is no requirement for renewal unless the other party has applied for renewal and the same is addressed and agreed upon by mutual consent. See **Ben Onyango Oudu versus Nakuru Industries Limited Cause No.146 of 2015**.

where a fixed term contract ends on its terms, it is lawful. that does not amount to unfair termination of employment and the claim for compensation is not justified. Employment ended lawfully. See **Kenya Union of Domestic Hotels Educational Institutions Hospitals and Allied Workers versus Office of the Vice Chancellor, Kibabii University [2017] eKLR; Eunice Mwikali Munyao versus Elys Chemical Industries Limited [2017] eKLR**.

in this case, the claimant's employment with the respondent was regulated under written contracts with terms and conditions of employment. The first contract of employment terminated on its terms on 30th November, 2016 and the claimant was paid his terminal dues and a certificate of service issued in accordance with section 51 of the Employment Act, 2007. Such lawfully ended the employment relationship.

The second employment commenced on 3rd January, 2017 where the appointment was conditional and subject to a probation period of 3 months. Section 42 of the Employment Act, 2007 allow for probationary contracts on terms and conditions which the parties may agree to be bound by. In this case the claimant was to perform his duties to the satisfaction of the employer, the respondent.

By letter and notice dated 13th March, 2017 the respondent notified that claimant that his work performance was not satisfactory and gave the reasons as to why. The claimant has not contested this notice in its import and content.

Upon the notice and warning, the claimant was notified that his probation period had not been successful and thus employment terminated on such terms. There was no contract issued beyond the probation period. The claimant was paid his terminal dues as under the letter of appointment on probationary terms dated 3rd January, 2017.

A certificate of service was issued and dated 24th March, 2017 effectively ending employment.

Such is lawful and acceptable mode of terminating employment. Where parties agreed to be bound in writing and on terms and conditions pre-set to regulate the work relations.

Without any material that the respondent was unfair and or went outside what was agreed upon, the claimant having been notified and warned as to his negligent performance of his duties and this not contested, the end of employment is found lawful.

Notice pay is not due where contract ended on its terms and notice was issued prior.

The terminal dues paid to the claimant included the leave days owing as at 24th March, 2017.

The claim for travelling allowance is not justified and not based on any legal provisions or private treaty existing between the parties.

Accordingly, the claims made are found without merit. The claim is hereby dismissed. Costs to the respondent.

Delivered in open court at Nakuru this 11th July, 2019.

M. MBARU

JUDGE

In the presence of:

Court Assistants: &

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