



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CASE NO. 150 OF 2016

[As consolidated with 151,152,153,154,155,156,157,158,211 and 212 of 2016

(Before Hon. Justice Mathews N. Nduma)

WACHIE RICHARD SINDANI.....1ST CLAIMANT
MOSES PETER ONEYA.....2ND CLAIMANT
JOSEPH MBEJA ORONDO.....3RD CLAIMANT
ERICK OMONDI OUMA.....4TH CLAIMANT
JORIM OWUOR OKUNY.....5TH CLAIMANT
JOSEPH OTIENO ADJOW.....6TH CLAIMANT
PHILIP ONYANGO ASEWE.....7TH CLAIMANT
FREDRICK OMOLLO ODHIAMBO.....8TH CLAIMANT
JACOB MALWA KASAVAYI.....9TH CLAIMANT
ADAM AMBROSE SHIUNDU.....10TH CLAIMANT
JIM ODERO AWUOTH.....11TH CLAIMANT

VERSUS

BUILDERS DEPOT LIMITED.....RESPONDENT

JUDGMENT

1. Eleven workers of Builders Depot Limited brought separate suits against their former employer following separation. The issue in dispute is whether the separation was a result of summary dismissal as the employees allege or if the employees' three (3) months fixed term contracts expired and were not renewed.
2. The claimants agreed to have the matters consolidated because they arose from the same set of facts. CW1 Richard Sindani testified on behalf of all the claimants and told the court that they were all employed as casuals. That they worked on similar terms except that the dates of employment differed. CW1 was employed in February 2014.
3. CW1 told the court that in November 2014, their manager informed them that they were employed on permanent terms. The communication was verbal. That the claimants received their salary fortnightly from November henceforth. The claimants worked as loaders. They loaded steel bars in trucks. They were all stationed at the depot. The claimants were paid Kshs. 11,040 less statutory deductions. The respondent deducted pay as you earn; National Social Security fund and National Hospital Insurance Fund. That they reported at 8.00 am and left at 5 p.m daily.
4. That on 30th January 2016, it was pay day. The claimants were called one by one and asked to sign a form before receiving their

payment. They were paid salary for days worked. The sales manager informed them that there was no longer work for them and that they should go home. The sales manager accused them of stealing steel bars with clerks, three of whom had already been dismissed.

5. The claimants begged to be paid in lieu of notice but it was not forthcoming. The claimants filed suit seeking payment of notice pay and compensation for the unlawful and unfair dismissal. The claimants wrote letters of demand but were not heeded, hence the suit.

6. CW1 denied that the claimants were employed on three months fixed contracts. CW1 stated that they did not sign any contract. CW1 said that they were made to sign these contracts before they were paid on the date they were dismissed. He had placed a thumb print on a document that he was not allowed to read. That this happened to the rest of the claimants. CW1 produced witness statements by the eleven claimants and the same were adopted as evidence in respect of all the claimants.

7. CW1 said that they did not go on leave and were not paid in lieu of leave every three months as alleged by the respondent. CW1 said that the claimants had no pay slips.

8. RW1 Ahmed Seti Abdalla testified in defence of the case. He relied on a witness statement dated 2nd November 2016. RW1 told the court that the claimants were employed on three (3) months fixed contracts. That upon expiry of the contracts, the same were renewed and the dues for these earlier contracts were paid before renewal. That this payment included payment in lieu of leave days not taken.

9. That the claimants would then sign disclaimer forms that they are not owed any further payments by the respondent and would not make any claims in respect of the expired contracts. That the last contracts were signed in November 2015 and the first one was signed in 2014. That the claimants were good workers. RW1 produced disclaimer forms signed in respect of contracts signed on 1st August 2015 and 31st October 2015.

10. That the claimants were given certificate of service since their last contracts were not renewed on 4th March 2016. RW1 produced these documents as exhibits in this case.

11. That the claimants were aware of the contract documents and disclaimer forms since they had signed them at the end of every three months.

12. RW1 stated that respondent did not receive any communication from the labor office. RW1 stated that he was the Branch Manager and all the claimants worked under him. RW1 said all claimants started to work in 2014, and had signed three months contracts until they separated from the respondent on 31st January 2016. That the Directors had refused to renew the claimants' contracts. RW1 prays that the claimants' suit be dismissed with costs.

Determination

13. The issues for determination are:

(a) Whether the claimants were summarily dismissed by the respondent or their contracts of employment expired and were not renewed.

(b) Whether the claimants are entitled to the reliefs sought.

Issue A

14. The documentary evidence produced by RW1 established that the claimants had from time to time since their employment signed three month contracts. The evidence by RW1 also disclosed that the last three month contracts signed by the claimants expired on 31st January 2016. The testimony by CW1 is that they received their last pay on 30th January 2016 and were made to sign documents by the sales manager before they got their pay. The sales manager had called the claimants one by one and upon paying each one of them informed them that there was no more work for them and should go home.

15. CW1 testified that the sales manager had accused them of theft of steal in collaboration with three clerks who had since been dismissed. RW1 denied that the claimants were dismissed for misconduct but the Directors had simply refused to renew the contracts of service of the claimants.

16. Whereas the practice of giving workers engaged in continuous service for a long period of time three months contracts is in the court's view unfair labour practice within the meaning of *Article 41 of the constitution*, this is not a matter for determination in this suit. It is for the workers to challenge this practice whilst they are working for the employer. If the contracts are not challenged timeously, then it is too late in the hour to challenge separation after the employer has failed to renew the short term contract.

17. Workers who are placed on short term contracts suffer various disadvantages including inability to access loans from banks, inability to go on leave within a year because the contracts are too short and inability to enjoy long term benefits enjoyed by other workers in the same establishment on continuous basis. Furthermore, workers on short term contracts face the anxiety of loss of employment very frequently as to constitute vexation whilst they continue to serve the employer diligently.

18. RW1 told the court that the claimants were good workers but their employment terms had expired lawfully.

19. Upon careful consideration of the oral and documentary evidence before court it is my considered finding that the employment of the claimants ceased upon expiry of fixed term contracts that were not renewed. The claimants had condoned that practice since 2014 and did not challenge it while they worked. The claimants signed disclaimer forms upon receipt of terminal benefits. The claimants were well aware of the implications of the forms they signed since they had signed the same several times voluntarily.

20. Accordingly, the claimants have failed to prove their cases on a balance of probabilities and are not entitled to the remedies sought.

21. In answer to issue (b) therefore, the suits by the claimants lack merit and are dismissed.

22. Considering that the claimants are unemployed and were kept on short term contracts unfairly for considerable period of time, this is an appropriate case for the parties to bear their cost of the suit.

Judgment Dated, Signed and delivered this 9th day of July, 2019

Mathews N. Nduma

Judge

Appearances

Mr. Nyaga for claimants

Mr. Makokha for respondent

Chrispo – Court Clerk