



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT BUNGOMA
CAUSE NO. 58 OF 2015

KUTULO LEONARD OMITO.....CLAIMANT

VERSUS

THE DAVID SHEDRICK WILDLIFE TRUST.....RESPONDENT

JUDGMENT

The Claimant prays for compensation for unlawful dismissal. The Claimant testified that he was employed by the Respondent on 19th September 2013 as an intelligent expert and he worked continuously for the organization until April 2014. That he was paid Kshs 10,000 per month. The Claimant relies on a letter dated 19.9.2013 which he states was written by one Nick Trend. That in terms of the letter he was placed on ten years contract up to September 2022.

Claimant stated that he worked for 8 months until 24th April 2014. Claimant stated that following massive poaching of African Elephants and other animals in the Tsavo East and West, Respondent embarked on establishing intelligence networks to help in curbing the vice. The Claimant was given that task but the Respondent terminated his services on allegations that the information the Claimant provided was not leading to any results. The Claimant was given 3 months to establish intelligence networks beginning 1st August 2013 to end of October 2013.

The Claimant stated that he got three (3) results from November and December 2013 after the network was in place. That the Respondent recovered 10 full pieces of Ivory weighing 115 Kgs in Voi town in the 1st instance. In the 2nd instance, they recovered 15 full Elephant tusks in KasKan area weighing 130 kgs and lastly they recovered 3 Rhino horns weighing 9.5 Kgs and 150 Kgs of Bush meat at Mangu area. That one (1) suspect was arrested.

That on 28.4.2014, the Claimant received an email from Nick Trend terminating his services. The Claimant states that the termination was unlawful and unfair and seeks compensation.

Under cross examination the Claimant stated he was employed by three persons namely, Madam Agella, Shedrick; Etille Olive and Nick Trend at the Tsavo East Offices. Claimant stated that he did not have the original Letter of Appointment. That he only had a copy. Claimant stated that the original was snatched from him by rioting youth on 20.11.2017 at Maseno University. That he lived at Bungoma. Claimant added that he was to be given an imprest of Kshs 40,000 per month in addition to the monthly salary of Kshs 40,000. That the imprest was to be used for intelligence gathering. That this was orally agreed. That the Claimant was however given 10,000 monthly for the 8 months he worked.

Claimant stated that he had international experience in matters wildlife and had worked in Lusaka, Tanzania and Uganda. Claimant denied that the letter of appointment was a forgery.

Claimant denied that the letter was an introductory letter to a Landlord to enable him rent a house and that he had added the words at the top that read " Ten years contract to September 2022."

Claimant states that paragraph 12 of the statement of defence confirms that the letter was written in September 2013.

The Claimant prays that he be compensated accordingly.

The Respondent called RW1, RW2 and RW3 in its defence.

RW1 Nicholas Trend testified that he had worked for the Respondent for about 5 years from November 2011 to 2016 as operational manager

doing anti-poaching aerial surveys. That he was introduced to the Claimant by an in law and was asked to help him get employment as he had just lost his job. RW1 stated that the Claimant had background in wild life tracking. RW1 decided to try him out in under cover networking in Tsavo East and West.

That they worked in partnership with Kenya Wildlife services. RW1 stated that the Claimant was not appointed on contract. RW1 confirmed that the Claimant was paid Kshs 40,000 per month for three months while he was on probation. RW1 stated that the Claimant asked him to write a letter of introduction for the Claimant to help the Claimant get a rented house at Mtito Andei. That is when RW1 wrote the Letter dated 19.9.2013 "to whom ever it may concern" for introduction purposes. RW1 denied that this was a letter of employment. RW1 stated that the contents in the main body of the letter were written by RW1 but the Claimant forged the words " Ten years contract to September 2022" at the top of the letter.

That forensic investigations confirmed that the said writing was different form the rest and was a forgery by a different person.

RW1 added that the Claimant was not producing results and another three months were added for his trial. That Claimant worked for 7 months. That the Claimant had no results and was paid money in the last month to pay off his informers. RW1 said that the Claimant's work was discontinued after the said 3 months due to no result.

Under cross examination, RW1 said that the Claimant had 3 small results only concerning Bush meat and other small animals.

RW1 stated that the email he wrote to Claimant stated that Claimant's time was up and the Claimant pleaded for more time hence the 3 months extension.

RW2 was Charles Kariuki who stated he was administrative manager of the Respondent and that the Respondent was a large wildlife conservation, Non governmental organization spread in various parts of Kenya. That Respondent has a huge work force and he kept records of all its employees. RW2 testified that the Claimant was never an employee of the Respondent as claimed or at all. That the Respondent has a policy of signing written contracts with all its employees and it had concluded no such contract with the Claimant.

RW2 stated however that he was aware Mr Nick Trent was engaged in establishing intelligence network in the Tsavo to curb massive poaching taking place there and that Trent who was a bush pilot was given funds to gather intelligence through persons. That, that program was independent of the Respondent and the Respondent was not involved in the day today running of the program.

The Respondent simply provided funds and expected results. The program was closed in April 2014 since it was not producing the desired results. That the Claimant sent extortion mails to the Respondent, subsequent to that claiming that he needed compensation for unlawful termination of employment.

RW2 denies that it ever employed the Claimant and prays the suit be dismissed with costs.

RW3 was Emmanuel Karisa Kenge a forensic expert contracted by the Respondent to examine the purported Letter of appointment produced by the Claimant dated 19.9.2013. RW3 testified that he had more than 27 years experience of forensic Document examination as a police examiner.

That upon examining the documents given to him by the Respondent, he filed a report dated 23.5.2017 which he produced before court as expert evidence.

RW3 concluded that the handwriting in the letter dated 19.9.2013 was written by same person as RW1 who had presented samples ' B1' and 'C1' for comparison with specimen 'A1' the purported letter of appointment. RW3 however found that the writing on the "subject" was written by a different author. RW3 found that the letter was manipulated by covering the area of the subject and photocopied. The covered area was written by a different author and then photocopied and produced exhibit marked 'A1'.

The Respondent pray that the suit be dismissed with costs.

Determination

The issues for determination are:

- a) Whether the Claimant was an employee of the Respondent and had his employment unlawfully and unfairly terminated.
- b) Whether the Claimant is entitled to the reliefs sought.

Issue (a)

A careful consideration of the testimony by the Claimant vis a vis the testimony of RW1, RW2 and RW3 has led the court to come to the following conclusions of fact.

- (i) That the Claimant was contracted by RW1 to help him gather intelligence in the Tsavo East and West on poaching activities with a view to stop the menace.
- (ii) The Claimant worked for RW1 between the period 19.9.2013 to 4.4.2014 a period of about 7 months.

(iii) That RW1 had mandate from the Respondent to undertake undercover intelligence work in the field. RW1 being a bush surveillance pilot requiring ground support formed undercover networks.

(iv) That the Claimant was one of the persons recruited under cover by RW1 on a three months trial period initially, which period was extended for a further 3 months and then stopped with effect from 4.4.2014.

(v) The court is satisfied that the Letter dated 9.9.2013 was written by RW1 to "Whom ever it may concern" for the purpose of introducing the Claimant to a person from whom he intended to rent a house at Mtito Andei.

(vi) The court is satisfied that the words "Ten years contract to September 2022." Were imposed on the letter by a different person and therefore a forgery.

Accordingly, the Claimant is not a truthful witness and has failed to demonstrate on a balance of probabilities that he was an employee of the Respondent.

Furthermore the Claimant has failed to demonstrate that his employment was unlawfully and unfairly terminated by the Respondent.

Contrary the Respondent has ably rebutted the testimony by the Claimant and has demonstrated that the Claimant was an undercover agent recruited independently by RW1 to gather intelligence on the ground and never received therefore a contract of employment from the Respondent.

In any event the engagement of the Claimant was on a trial basis and extension of the term depended on the outcomes on the ground.

The Claimant was paid for the work done in the seven (7) months he served RW1. The Claimant has in any event not sued RW1 nor has he claimed any unpaid salary.

The prayer for compensation for unlawful dismissal by the Respondent lacks merit and is dismissed with costs.

DATED, SIGNED and DELIVERED at BUNGOMA this 26Th day of SEPTEMBER, 2019.

HON. M. N. NDUMA, JUDGE

EMPLOYMENT AND LABOUR RELATIONS COURT

BUNGOMA

Appearance:

Claimant in person

Kemboy & Co. Advocates for the Respondents

Joy: Court Assistant.