

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 410 OF 2016

JACOB OKECHE.....CLAIMANT

VERSUS

WADIA CONSTRUCTION LIMITEDRESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 29th November, 2019)

JUDGMENT

The claimant filed the memorandum of claim on 16.03.2016 through Ochichi TLO & Associates. The claimant prayed for judgment against the respondent for:

- a) Kshs.266, 215.00.
- b) General damages for breach of contract.
- c) Costs of the suit plus interest.

The evidence is that the respondent employed the claimant on probationary service for one month by the letter dated 31.05.2008. After one month the respondent would employ him on permanent terms. By the letter dated 05.11.2010 the claimant was admitted for training in Higher Diploma in Building and Civil Engineering offered by the Kenya Institute of Highways and Building Technology. The claimant's case is that on 10.01.2011 he wrote requesting the respondent for sponsorship in connection with Directorate of Industrial Training requirements. Further, the claimant's case is that the respondent accepted the request and the fees paid by the respondent were to be claimed from the Industrial Training Institute. It is the claimant's case that the respondent subsequently relocated the offices and operations of the company without any notice to the claimant and in total disregard of the claimant's interest in terms of transport allowances and accommodation forcing him to resign from the respondent's employment. Further the respondent subjected the claimant's final pay to the fees paid towards the training contrary to the regulations and clear agreement between the parties. The claimant says he demanded but the respondent had failed to purge the breach of contract and the entitlements as claimed.

The memorandum of defence was filed on 06.05.2016 through Onesmus Githinji & Company Advocates. The respondent's case is that it relocated its office in good faith and it was within its lawful prerogative to do so. Further the claimant was aware about the looming relocation but he raised no grievance to the respondent. The respondent denied unjustly profiting from the claimant or prejudicing the claimant. The respondent prayed that the claimant's claim be dismissed with costs.

The claimant's counsel applied that the suit is determined on the basis of the pleadings and documents on record and the Court ordered accordingly.

As submitted for the respondent the claimant has not broken down and pleaded by way of particulars of the special damages of Kshs.266, 215.00. It is not clear how the amount claimed was arrived at. As was held by the Court of Appeal in **Hahn –Versus- Singh (1985)**, special damages must not only be claimed specifically but proved strictly for they are not the direct natural or probable consequences of the act complained of and may not be inferred from the act. Further, the degree of certainty and particularity of proof required depends on the circumstances and the nature of the act themselves.

Whereas the documents filed show that the claimant's training was approved, it is not clear how the amount claimed was arrived at and the evidence to justify the award as prayed for has not been provided to the Court. As submitted for the respondent there was no evidence of a contractual provision that the respondent could relocate its enterprise and place of operation at the claimant's convenience. The contract simply provided that the claimant would carry out his duties as assigned and there was no restriction on the place of work or assignment. The claimant resigned abruptly on 04.11.2013 and on account that he would not meet the operational costs to report at the respondent's new office. Further the claimant stated that he had decided to pursue other ventures that could keep him afloat financially. In that case the Court returns that the claim cannot succeed especially that the claimant resigned and he appears not to have had a grievance about the fees. Even if the claimant's grievance is that the fees were deducted from his final dues, the particulars have not been pleaded and the relevant evidence has not been provided and explained to establish the claim. It is not clear whether the resignation had any impact on the claims and if after the resignation the respondent's capacity to recover the fees might have been impaired. All these matters remain unanswered by relevant pleadings, evidence and submissions. Thus the Court returns that the claimant's suit will collapse.

Looking at the respondent's conduct throughout the proceedings and in some instances failing to comply with clear Court directions, each party will bear own costs of the suit.

In conclusion judgment is hereby entered for the respondent for dismissal of the suit with orders each party to bear own costs of the suit.

Signed, dated and delivered in court at Nairobi this Friday, 29th November, 2019.

BYRAM ONGAYA

JUDGE