



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1561 OF 2015

(Before Hon. Justice Mathews N. Nduma)

JOSEPH OKELLO OWADE.....CLAIMANT

VERSUS

STAR PLASTICS LIMITED.....RESPONDENT

JUDGMENT

1. The suit was filed on 3rd September 2015 praying for maximum compensation for unlawful and unfair dismissal, interest and costs.
2. The claimant testified under oath that he was employed by the respondent on 1st August 2012 as an Electrician at a monthly salary of KShs. 30,000.
3. That the claimant worked diligently until 2nd February 2015, when upon reporting to work he was handed a letter of termination dated the same date, the 2nd February 2015. The letter did not provide any reason for termination of employment however, the claimant testified that he was told that termination was due to his old age.
4. The claimant testified that the termination was unlawful and unfair in that he had done nothing wrong and had a good record of work. Claimant testified that old age was not a valid reason for termination of his employment without notice.
5. The respondent called RW1 Rusheshi F. Shah who testified that the claimant had worked for the respondent and had no disciplinary case. That the claimant worked for one month after his contract expired and then he was served a letter of termination. That his contract expired in December 2014 and it was not renewed. The respondent produced the letter of appointment for the period 1st January 2014 to 31st December 2014. RW1 prayed the suit be dismissed.

Determination

6. It is not in dispute the claimant was employed on a fixed term contract from 1st January 2014 up to 31st December 2014. It is also not in dispute that the employment of the claimant was terminated by a letter dated 2nd February 2015. At the time of the termination the claimant was not on any fixed term contract for at least one month. The respondent testified that the claimant served one month before his employment was terminated upon expiry of his contract and that the contract was not renewed.
7. The claimant testified that the termination of his employment was due to old age. The claimant did not tell the court at what age the termination of his employment occurred. The claimant testified that old age is not a valid reason for termination of employment.
8. It is true that the general retirement age of public servants is 60 years. A few sectors including judiciary and universities have retirement age ranging from 60 to 70 years.
9. Old age is a valid reason for retirement of employees from employment. The retirement age must be stated in the letter of appointment. It must be known to the employee in advance. The employee is entitled to at least one month notice to the date of retirement to allow him to prepare for the same.
10. The letter of appointment of the claimant did not have a date of retirement. However the claimant was employed on a fixed term contract that expired on 31st December 2014. The claimant did not provide any evidence that he had requested for renewal of the contract. RW1

testified that the claimant's contract was not renewed but the respondent provided the claimant one month termination notice up to 2nd February 2015. RW1 testified that the termination was not for any disciplinary reason.

11. It is the court's considered view and finding that the contract of employment of the claimant expired by effluxion of time. That the claimant served an extra one month during which he received an extra salary but this did not translate to a renewal of his employment contract.

12. The claimant provided no evidence that he had requested for renewal of his contract.

13. The court finds that the employment of the claimant having expired by effluxion of time was lawful and fair.

14. The respondent cannot be faulted for allowing the claimant to serve an extra month which was fully paid for.

15. The claimant was paid for all days worked and he has not claimed payment of any terminal benefits. The claim was for award of compensation for unlawful dismissal.

16. Accordingly, the suit lacks merit and is dismissed with costs.

Dated and Signed in Kisumu this 14th day of November, 2019

Mathews N. Nduma

Judge

Delivered and signed in Nairobi this 22nd day of November, 2019

Maureen Onyango

Judge

Appearances

Mr. Namada for Claimant

Mr. Gachoka for Respondent

Chrispo – Court Clerk