



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO. 170 OF 2018

JARED OKERO BOSIRE.....CLAIMANT

VERSUS

RILEY SERVICES LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant herein sued the Respondent seeking to recover for the alleged unlawful and unfair termination of employment on 25th September 2017. The Claimant averred that he was working as a security guard at the time of his termination earning a salary of Kshs. 14,164/- a month. He averred that he was employed on 26th September 2012. He averred that prior to his dismissal he was not notified of any misconduct or a notice to show cause issued. He averred that he was dismissed via a mobile phone call from one Mr. Isaac Mburu a supervisor in the Respondent after he asked for his annual leave. The Claimant avers that his dismissal was thus unfair and unlawful for the reasons aforesaid. He therefore sought the payment of maximum compensation being 12 months' salary, service pay for 5 years worked, unpaid leave of 1 year – Kshs. 14,164/- and 1 month's salary in lieu of notice – Kshs. 14,164/-. He also prayed for costs of the suit.

2. The Respondent in its defence averred that the Claimant was a security day guard and was on annual fixed contracts. The Respondent denied that the Claimant earned Kshs. 14,164/- and sought strict proof of that allegation. The Respondent averred that the Claimant's services were terminated upon the expiry of his fixed term contract where the Respondent opted not to hire the Claimant for a fresh term. The Respondent denied that the Claimant was verbally dismissed for asking for his annual leave. The Respondent averred that in his service the Claimant either went on leave or encashed it and any other claims he may have on leave dues are time barred by virtue of Section 90 of the Employment Act. The Respondent asserted that there is no obligation on an employer to renew a fixed term contract. The Respondent averred that the suit is an abuse of the court process and ought to be dismissed with costs.

3. The Claimant testified as did Mary Webuye the Respondent's human resource officer. The Claimant stated that he was still a security guard and that he previously worked for the Respondent from 26th September 2012 till 25th September 2017 when his employ was terminated. He was cross examined and testified that he was employed in 2012 after training for 3 months. He stated that he worked in Nairobi at National Oil Corporation, some assignments at Carnivore, Nation Media, Nyeri Eco-Bank and Meru Eco-Bank and that it was in Nyeri that the contract was terminated. He testified that the contracts were signed every year and they were renewed every year. He stated that in 2016 the contract was renewed and he signed the contract and that as per the contract it was to end in 2017. He stated that he was not aware as to when the contract was to end. He was shown the contract for 26th September 2016 expiring on 25th September 2017 and he said he had not seen the contract. He stated that he earned Kshs. 14,164/- and not any other figure as suggested. He denied that the basic pay was Kshs. 6,970/-. He was referred to the Respondent's exhibits and stated that the basic pay was Kshs. 6,970/- plus house allowance of Kshs. 1,045/-. He was asked about public holidays and stated that he was not aware of the payment for public holidays. He confirmed that there was a figure for overtime on the payslip and that the payslip for Kshs. 14,164 included overtime, pay for public holidays and house allowance. He stated that he had sought leave for 2012-2013 as there was no claim for leave in 2014, 2015 and 2016. He stated that he would seek leave and it would normally be encashed. He stated he did not proceed for leave in 2012-2013 nor was he paid in lieu of the leave. He stated that he was asked to report to the head office and there he was told to wait but nothing happened and he sought legal aid. He testified that he had joined the union just before the contract was terminated and he did not go to the Labour Office. He stated that the certificate of service was not legal as it only covered one year yet he had worked from 2012-2017. He admitted receiving a sum of Kshs. 24,364.50 in September 2017 upon return of the uniforms. In re-examination he testified that he did not get any encashment and did not go on leave in 2012-2013. He stated that he was issued a certificate of service which showed he worked from 26th September 2016 to 25th September 2017 and he had worked for 5 years.

4. The Respondent's witness testified that the Claimant worked for the Respondent as a guard and that he had a yearly contract which was renewable. She stated that in 2016 it was renewed for one year and that the contract ended and the company decided not to renew it. The Respondent's witness testified that the Claimant was paid for the annual leaves and that there was communication that the contract would not be renewed. She was referred to a letter in the Respondent's bundle and she confirmed she was the author of the letter to the Claimant which was delivered to him through the branch. She testified that she notified him of the contract coming to an end and he came to the head office to meet her after calling. She stated that she told him the contract would not be renewed. She stated that there was a meeting at the office

between them and the Union and the Union agreed the Respondent had acted legally and that there was no other engagement on the matter from the Labour Office. She was cross examined and testified that there was no reference to the Union in her statement. She stated that she had been asked a question and had answered. She confirmed that it was only at the hearing that the issue of the Union had come up. She testified that the Claimant's terminal dues were paid. She stated that per the payslip in court the Claimant's dues were paid and that it included the leave for 2016-2017. She testified that it also included uniform refund of Kshs. 6,000/-. She stated that there was a contract expiring in 2017 and it was even mentioned in her letter. She stated she did not know if the contract had been produced in court. In re-examination she stated that the Claimant had a yearly contract hence the letter of 26th August 2016 and 24th August 2017. That marked the end of oral testimony and parties were to file submissions.

5. The Claimant filed submission and stated therein that the Respondent had not produced the last purported contract which was to expire on 25th September 2017. The Claimant submitted that the Employment Act placed a burden on the employer under Section 10(7) to produce the written contract and the particulars stipulated under Section 10(1) of the Act. The Claimant submitted that the contract exhibited in his documents was for 2012 and did not cover all the years he worked until 2017. He submitted that the facts he had adduced were not controverted by the Respondent and that he was entitled to all the reliefs sought in his claim.

6. The Respondent submitted that the Claimant was aware of the expiry of his contract and on his leave application letter indicated that the contract was to expire on 25th September 2017. The Respondent submitted that there was no obligation for renewal of the fixed term contract as held in the case of **Julius Gatikuri Munyu Mutuaruchia v National Irrigation Board [2019] eKLR** where the court held that an employer does not owe an employee any explanation for non-renewal of a fixed term contract. The Respondent thus sought the dismissal of the suit with costs.

7. The Claimant herein tried to fool the Court as he clearly knew his contract was not renewed and was coming to an end on 25th September 2017. His handwritten letter dated 24th August 2017 which he admitted he authored was to the following effect:-

The Human Resource Manager

Riley Services Limited

PO Box 56152-00200

Nairobi

Dear Sir/Madam

RE: APPLICATION FOR ANNUAL LEAVE

This is to notify you that my contract expires on 25th Sep. 2017

And as per the Company Contract Act Section (5) Subsection (5-i), and according to the employment Act (Cap 226) Section 28 subsection 1(a) laws of Kenya, I do hereby apply for the annual leave. Hopefully my application will be considered and timely response made.

Thanks

Yours faithfully,

(signed)

Jared Okero Bosire

8. The above letter clearly shows knowledge that makes this suit baseless and a waste of judicial time. The suit is dismissed with costs to the Respondent for being an abuse of the court process.

It is so ordered.

Dated and delivered at Nyeri this 7th day of November 2019

Nzioki wa Makau

JUDGE