



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 425 OF 2018**

**WILFRED OMAIYO NDEGE.....CLAIMANT**

**-VERSUS-**

**RILEY SERVICES LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Thursday 19th December, 2019)

**JUDGMENT**

The claimant filed the statement of claim on 26.03.2018 in person. The claimant prayed for judgment against the respondent for:

- a. A declaration the termination or dismissal of the claimant was unfair.
- b. A declaration the respondent fundamentally breached his statutory obligations under the constitution of Kenya 2010 and the Employment Act, 2007.
- c. The respondent to pay the claimant a sum of Kshs.218,347.50 plus interest being:
  - i. One month salary in lieu of notice Kshs.12, 477.00.
  - ii. September salary arrears Kshs.12, 477.00.
  - iii. Leave pay Kshs.12,477.00 x 21 x 5 Kshs.43,669.50.
  - iv. Compensation for unfair termination Kshs.12, 477.00 x 12 months Kshs.149, 724.00.
- d. Respondent to deliver a certificate of service.
- e. Costs of the suit plus interest thereon.
- f. Any other relief as the Court would deem just and expedient to grant.

The memorandum of response and counterclaim was filed on 01.03.2019 through Obura Mbeche & Company Advocates. The respondent counter claimed for one month pay in lieu of notice Kshs.12, 477.00 and the claimant's suit to be dismissed with costs.

To answer the **1st issue** for determination, there is no dispute that the parties were in a contract of service. The respondent employed the claimant initially on 26.02.2011. The claimant served on annual contracts that were renewable. The evidence was that at the end of the contract the claimant was given a one month paid leave and thereafter he would come back to renew the contract for a further term of one year. The last of such contract expired on 25.08.2015 and the claimant took annual leave up to 25.09.2015.

To answer the **2nd issue** for termination the Court returns that there was no unfair termination in the instant case. When the contract lapsed on 25.08.2015 the claimant took leave up to 25.09.2015 in accordance with the parties' practice and agreement whenever the one year contract lapsed. The claimant resumed to sign a new contract but instead he asked for two weeks prior to resumption of duty and which was granted. By his letter dated 10.10.2015 he requested for 2 weeks of unpaid leave to attend to some cultural ceremony. He testified that he took his children for circumcision ceremony at his village home. He further testified that after the contract of 25.08.2014 to 25.09.2014, he did not renew the Contract for 2015.

Thus the Court returns that the claims for unfair termination were unfounded as the contract of service had lapsed on 25.09.2014 and the parties entered no further contract in that regard. Similarly, the contract having lapsed and not renewed, the respondent was misconceived in praying in the counterclaim for one month pay in lieu of termination notice and parties are found to have been misconceived when the respondent granted the claimant 2 weeks of unpaid leave to attend the cultural circumcision ceremony because at that point the parties were not in any contract of service. The Court returns that the counterclaim fails and the claims for unfair termination and compensation by the claimant will equally fail.

To answer the **3rd issue** for determination the Court returns that the claimant testified that he was paid in lieu of leave or he took leave. The claims and prayers for pay in lieu of leave will therefore fail. There is no basis for the prayer for salary arrears for September 2015 as the contract had lapsed on 25.09.2014 and the claimant was fully paid up to the last day of the lapsing contract. There was no termination and the prayer for one month pay in lieu of termination was misconceived. The claimant is entitled to a certificate of service per section 51 of the Employment Act, 2007.

To answer the **4th issue** for determination the Court returns that in view of the parties' margins of success, each party to bear own costs of the suit.

In conclusion, judgment is entered for the parties for:

- a. The respondent to deliver a certificate of service by 31.12.2019.
- b. The counterclaim is dismissed.
- c. Each party to bear own costs of the suit.

**Signed, dated and delivered** in court at **Nairobi** this **Thursday, 19th December, 2019**.

**BYRAM ONGAYA**

**JUDGE**