



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA

CAUSE NUMBER 510 OF 2016

BETWEEN

LEONARD OCHIENG'CLAIMANT

VERSUS

SEIZU COMPANY LIMITED.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Mburu Nyamboye & Company Advocates for the Claimant

Balala & Abed Advocates for the Respondent

JUDGMENT

1. The Claimant filed his initial Statement of Claim on 21st June 2016, and Amended Statement of Claim, on 19th September 2016. He states he was employed by the Respondent in March 2008, as a Sales Manager. He worked until 30th April 2016 when the Respondent terminated Claimant's contract of employment without assigning valid reason. His last basic salary was Kshs. 20,000 monthly. He was not paid terminal dues. He prays for Judgment against the Respondent for:-

- a) House allowance from March 2008 to April 2016 at 15% of the basic salary, at Kshs. 288,000.
- b) 1 month salary in lieu of notice at Kshs. 20,000.
- c) Annual leave allowance of 8 years at Kshs. 160,000.
- d) Public holidays at Kshs. 123,000.
- e) N.H.I.F contributions deducted but not remitted at Kshs. 48,000.
- f) N.S.S.F contributions deducted but not remitted at Kshs. 38,000.
- g) 12 months' salary in compensation for unfair termination at Kshs. 240,000.

Total...Kshs. 917,000

- h) Punitive damages.
- i) Any other suitable relief.

2. The Respondent filed its Statement of Response on 6th September 2016. Its position is that the Claimant was employed as a Salesman, with effect from January 2016, on a basic monthly salary of Kshs. 20,000. He wrote to the Respondent a letter of resignation on 31st March 2016. His contract was not terminated by the Respondent. The Claim is vexatious and discloses no reasonable cause. The Respondent urges the Court to dismiss the Claim, with costs to the Respondent.

3. Parties agreed in Court on 14th February to have the Claim considered and determined on the strength of the record. They confirmed filing of their respective Closing Submissions, on 1st December 2017.

4. The **Claimant submits** in replying to Claimant's Advocates demand letter before filing of the Claim, that Respondent's Advocates stated the Claimant was employed by the Respondent in the April 2010. This differs from the assertion in the Statement of Response, that the Claimant was employed in January 2016. In Claimant's resignation letter, which was accepted by the Respondent, the date of employment is shown to fall in the year 2008.

5. The Claimant submits that he did not go on annual leave and was paid nothing in lieu of annual leave; he worked on public holidays without holiday pay; N.H.I.F and N.S.S.F statutory contributions were deducted, but not remitted; the Claimant was forced into resignation and entitled therefore to compensation; and the Claimant has incurred costs, warranting an order for costs against the Respondent.

6. **The Respondent submits** that the Respondent Company was incorporated on 7th December 2015. It employed the Claimant in January 2016. The Claimant tendered his resignation through a notice dated 31st March 2016. He has not shown his contract was unfairly terminated by the Respondent, as required under Section 47 [5] of the Employment Act 2007. He worked for a period of 4 months, and is not entitled to the prayers sought.

The Court Finds:-

7. The Respondent exhibited among other documents, a Certificate of Incorporation, indicating the Respondent came into being, on 7th December 2015.

8. The Claimant did not make any attempt to explain to the Court, who employed him in 2008.

9. He did not allege to have been employed by any Person associated with the Respondent Company prior to its incorporation. He did not explain at all, how he was employed in 2008, when the Respondent was demonstrably not in existence. In his complaint to the Labour Office on 5th May 2016, it is stated that the Claimant worked for the Respondent as a Salesman from 2015. The complaint is worded in first person: *“ I worked for you as Salesman as from 2015.”*

10. The Respondent, did however state, in its letter dated 27th June 2016, that the Claimant was employed in April 2010. It is not specified in what legal or business form, the Respondent was constituted in April 2010, so as to employ the Claimant before incorporation. Different dates when the Claimant was employed, are mentioned by the Parties.

11. It is safe to conclude that the Claimant was employed by the Respondent in its different legal or business form, in April 2010. However, the date of employment may not be significant, in view of the findings below.

12. There is ample evidence that the Claimant resigned through his notice of resignation dated 31st March 2016. Resignation was voluntary. His prayers for compensation for unfair termination, and notice pay are unfounded. He made the decision to resign. He gave his Employer a 30-day notice of resignation. Why would he then ask for compensation and notice pay? He prays for punitive damages. The Court does not see any reason whatsoever, why the Respondent should pay punitive damages to the Claimant, for the unilateral decision of the Claimant, to terminate his contract of employment. These prayers are rejected.

13. When the Claimant lodged complaint at the Labour Office, Mombasa, he restricted his complaint against the Respondent to annual leave pay for 2015-2016. He did not allege there were any outstanding obligations from the year 2008.

14. There were no complaints about house allowance; public holidays; or deducted, but unremitted statutory contributions, back-dating to 2008. These were raised first in the Claimant's demand letter dated 27th May 2016. The complaint to the Labour Office is dated the same month, 5th May 2016. Why did the Claimant include only a complaint about annual leave, restricted to 2015-2016? Section 47 [3] of the Employment Act 2007 states that the right of an Employee to present a complaint at the Labour Office, shall be in addition to complaint about the same issue to the Court. This right includes also, the right to complain about any other infringement of the Employee's statutory rights. The Claimant is therefore within the law in bringing to Court claims, which he left out at the Labour Office. However, in the view of the Court there ought to be some plausible explanation why most of the claims were excluded at the Labour Office. The Court must discourage the trend where, on engagement of an Advocate, or on filing of Claims in Court generally, additional grievances are raised. This trend exacerbates disputes and strains judicial economy. The process at the Labour Office, like other processes out-of-Court, is meant to be a sifting mechanism where the issues in dispute are reduced, if not resolved. Logically, the issues forwarded to the Court should reflect this sifting, and diminution in the weight of issues in dispute. The Court's impression is that the additional prayers on demand, and on filing the Claim, were made in afterthought.

14. There is no evidence that as a Salesman, the Claimant was required to work, and worked, on public holidays. Salesmen normally have latitude in regulation of their working hours. He has not shown that he was denied house allowance. He did not exhibit any Statement of Account from the N.S.S.F and N.H.I.F to establish his assertion on the statutory deductions. He did not indicate to the Court if he has taken any steps against the Respondent for noncompliance, under the respective legal regimes governing the recipient statutory bodies. Statutory deductions should in any event, not revert to the Employee; they should be remitted to the statutory bodies through enforcement mechanisms

available under the different legal regimes, to enable the Employee derive full social security benefits.

15. The Court shall dismiss the Claim, save for the prayer on annual leave pay, which is granted over a period of 1 year, 2015-2016, at Kshs. 16,153.

IN SUM, IT IS ORDERED:-

a) The Respondent shall pay to the Claimant annual leave pay at Kshs. 16,153.

b) No order on the costs.

Dated and delivered at Mombasa this 9th day of March 2018.

James Rika

Judge