



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 2223 OF 2014

JOB OGOTI ORIRI.....CLAIMANT

VS

BASCO PRODUCTS (K) LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. The Claimant’s claim brought by Memorandum of Claim dated 15th December 2014 and filed in court on even date is for unlawful and unfair termination of employment. The Respondent filed a Memorandum of Defence on 13th February 2015.

2. When the matter came up for hearing, the Claimant testified on his own behalf and the Respondent called its Administrative Assistant, Albert Owiyo. Both parties also filed written submissions.

The Claimant’s Case

3. The Claimant states that he was employed by the Respondent as a Machine Operator on 13th September 2011. His monthly salary at the time of leaving employment was Kshs. 14,693.

4. The Claimant further states that on 15th February 2013, he was involved in an industrial accident while at work at the Respondent’s premises. He was taken to Nairobi West Hospital by the Respondent’s officer in charge of safety and hygiene, one George. The Claimant was treated and discharged and was thereafter given permission to rest for a few days before resuming duty. On resumption, the Claimant continued to work, though with some strain brought about by standing for long hours.

5. The Claimant avers that on 21st July 2013, the Respondent, through its Human Resource Manager, gave him a one week off. Upon reporting back, the Claimant was told by the Respondent’s Head of Production, one Mr. Kishor to go home and wait to be called back. The Claimant was never called back and when he went to the Respondent’s offices on 2nd August 2013, he was notified by Mr. Kishor that there was no work for him.

6. It is the Claimant’s case that he was dismissed unlawfully and unfairly. He therefore claims the following:

- a) One month’s salary in lieu of notice.....Kshs.14,693
- b) Salary for the month of July 2013.....14,693

- c) Leave pay for 3 years.....44,079
- d) Service/gratuity @ 15 days for every completed year..... 14,693
- e) 12 months' salary in compensation.....176,316
- f) Costs plus interest

The Respondent's Case

7. In its Memorandum of Defence dated 10th February 2015 and filed in court on 13th February 2015, the Respondent states that the Claimant was employed on three month contracts which were intermittently renewed. The last such contract by which the Claimant was engaged as a general labourer at a consolidated salary of Kshs. 14,484 ran from 22nd April 2013 to 21st July 2013.

8. The Respondent denies terminating the Claimant's employment and states that the last fixed term contract having lapsed on 21st July 2013, a decision was made not to renew it and the Claimant was paid his full terminal dues made up of days worked and pending leave days.

9. Regarding the claim for service pay, the Respondent states that all the Claimant's contributions to the National Social Security Fund (NSSF) were duly made. The Claimant is therefore not entitled to service pay by dint of Section 35(6)(d) of the Employment Act, 2007.

10. On the claim for salary for the month of July 2013, the Respondent states that the Claimant had been advanced a loan in the sum of Kshs.10, 000 which was recoverable from his salary in instalments. In July 2013 when the Claimant's contract expired, there was an outstanding balance of Kshs. 2,000 which was deducted from the Claimant's final dues.

11. In response to the claim for leave pay, the Respondent states that the Claimant was granted leave and/or paid in lieu thereof for all intermittent fixed term contracts.

Findings and Determination

12. The following issues fall for determination before the Court:

- a) Whether the termination of the Claimant's employment was lawful and fair;
- b) Whether the Claimant is entitled to the remedies sought.

The Termination

13. The Claimant states that his employment was unlawfully and unfairly terminated from 21st July 2013. The Respondent on the other hand maintains that the Claimant's fixed term contract lapsed on the said date and no claim for unlawful or unfair termination can lie.

14. From the evidence on record, the Claimant's last contract commenced on 22nd April 2013 and was to terminate on 21st July 2013. This contract, like all other previous contracts is titled '*contractual employment contract for specific period.*' In my understanding, this was a fixed term contract for all intents and purposes.

15. The law governing renewal and non-renewal of fixed term contracts is now well settled and it is this; that these contracts do not carry automatic renewal and the employer is not obligated to give notice or reason for non-renewal (see *Margaret A. Achieng v National Water Conservation Corporation [2014] eKLR*). The only exception to this general rule is in situations where the employer attempts to circumvent accrued legal obligations. No such case has been laid before the Court and I therefore find that at the time

the Claimant left the Respondent's employment, he had served the full term of his fixed term contract and no claim for unfair termination can lie. This dispenses with the claim for compensation and notice pay.

16. The Respondent produced evidence to prove that the Claimant was paid his salary for July 2013 and the claim thereon is therefore without basis and is dismissed. In response to the claim for leave pay, the Respondent produced final/leave clearance forms showing payment in lieu of leave for each contract. This claim is therefore also without basis and is dismissed. The Claimant was a contributing member of the National Social Security Fund and is consequently not entitled to service/gratuity pay.

17. In the end, the Claimant's entire claim fails and is dismissed.

18. Each party will bear their own costs.

19. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 28TH DAY OF MARCH 2018

LINNET NDOLO

JUDGE

DELIVERED IN OPEN COURT AT NAIROBI THIS 13TH DAY OF APRIL ,2018

ONESMUS MAKAU

JUDGE

Appearance:

Mr. Mungai for the Claimant

Mr. Kilonzo for the Respondent