



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 428 OF 2014

(Formerly Milimani CMCC No. 5995 of 2008)

(Before Hon. Justice Hellen S. Wasilwa on 21st May, 2018)

AIRKENYA EXPRESS LIMITED..... CLAIMANT

VERSUS

SAMUEL MUIRURI NJENGA.....RESPONDEDNT

RULING

1. The Claim was initially filed before the Milimani CMCC as CMCC No. 5995/08. The Claim was initiated through a Complaint filed by the Plaintiff through E. K. Mutua & Company Advocates on 6.7.2012. Through the order of Hon. Lady Justice Khaminwa, this file was transferred to the Employment and Labour Relations Court for further hearing and determination and now registered as Cause No. 428/2014.
2. The Claimant's case is that the Respondent had been their employee at all time. That on or about 30th May 2008, in breach of the employment contract, the Defendant terminated his services with the Plaintiff without giving requisite notice and by failing to repay the requisite sums for his training.
3. The requisite prayers sought by the Plaintiff against the Respondent is for payment of Kshs.44,800/= salary erroneously paid for the month of June 2008 and Kshs.237,235 expended in training/bond all sums totaling Kshs.282,035/=.
4. The Plaintiff also seeks costs of this suit and interest at Court rates until payment in full.
5. The Plaintiff gave oral evidence in Court and in cross-examination CW1 stated that the Respondent had vide Appendix 1 executed a training bond and that he was trained as Dash 8 Maintenance. He states that the Respondent was paid salary for June 2007 after resigning in May 2007. She avers that the Respondent was to utilize his leave as notice period.
6. The CW1 points out in re-examination that the bond at paragraph 2 indicates that the employer paid 237,235/= on behalf of the employee for the training and Respondent signed this bond. They also point out that the contract Clause 13 could be terminated by giving 1 month notice. That however the notice of the Claimant is dated 30/5/2008 and he stated that he was resigning from 1.6.2008 which is not equivalent to 1 month's notice and he didn't indicate which leave days were outstanding.
7. The Respondent opposed this claim. The Respondent filed his defence on 30.10.2008 through the firm of D.K. Thuo & Company Advocates. He denied terminating the contract illegally but states that he gave the requisite notice to the Plaintiff.
8. He denies he owes the Plaintiff Kshs.282,035/= by way of special damages. He avers that the contract between him and Plaintiff was rescinded when the Defendants failed to pay him his remuneration in February and March 2008.
9. The Parties filed their respective submissions, which in principle reiterate their evidence in Court and through their pleadings.
10. I have considered the evidence and submissions. The parties do not deny the existence of the employment relationship. The Plaintiff has averred that he trained the Respondent which fact is proved by the certificate of training – Exhibit 2.
11. The Respondent admitted he was trained on job and was issued with the said certificate. He also admitted in cross-examination that he did not refund the money of the bond.

12. On issues of giving the requisite notice, the Respondent admitted that he gave notice but the letter of resignation is dated 30/5/2008 and the resignation was to take effect from 1/6/2008. He stated that his leave days was to act as notice to the company. There is no proof that the Respondent had any leave days due and pending. It is therefore my finding that the Respondent was erroneously paid 44,800/= as June 2008 salary.

13. I find that the claim by the Plaintiff herein is proved and I accordingly order the Respondent to pay Claimant Kshs.282,035/= as prayed plus costs and interest with effect from the date of this judgement.

Dated and delivered in open Court this 21st day of May, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Parties