



REPUBLIC OF KENYA

EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT KERICHO

ELRC APPEAL NO. 4 OF 2018

(Before D. K. N. Marete)

UNILEVER (K) LIMITED.....APPELLANT

VERSUS

RICHARD OMBATI KIBOMA.....RESPONDENT

JUDGEMENT

This matter was originated by a Memorandum of Appeal dated 23rd April, 2009. It comes out as follows;

1. THAT the learned trial Magistrate erred both in law and fact in finding that the plaintiff was wrongfully terminated despite the evidence adduce by the defendant and submission on record.

2. THAT the Learned Trial Magistrate erred in both law and fact in:-

a) Awarding the plaintiff gratuity of Kshs.90,640/= calculated on monthly salary of kshs.8,240/= for 11 years.

b) Awarding the Plaintiff salary for the month of December 2005 and pro-rata leave equivalent to one (1) month salary hence a total of Kshs.16,480/=

c) Awarding the plaintiff one (1) way fare of Kshs.1,380/=

d) Awarding the plaintiff costs of the suit.

This matter has a curious history of prosecution. The respondent was initially represented by the firm of Oange & Company Advocates whose advocate, Mrs. Alice Oange is now deceased and that her law firm is no longer in existence.

The appellant in this regard file an application dated 6th February, 2018 seeking that the firm of Oange & Company Advocates be deemed to be no longer on record for the defendant. It also sought for orders to serve the said defendant in person.

The application was allowed by orders of this court on 30th May, 2018.

On 8th June, 2018 counsel for the appellant sought the courts leave to serve the respondent by registered post on grounds that they had been unable to serve him in person. This was granted.

The matter came for a further mention on 22nd June, 2018 when counsel for the appellant in the absence of the respondent submitted having effected service onto the respondent who was absent. Directions were issued on a determination of the appeal by way of written submissions. A date for judgement was also issued.

The appellant has filed her written submissions dated 28th June, 2018. However, by an Affidavit of Service sworn on 8th June, 2018, the deponent Erick Vickson Kimutai, a process server made the following averments;

1. THAT I am a Process Server duly authorized to serve legal process.

2. *THAT on the 4th June 2018, I received instructions from M/S Bett & Co. Advocates to effect services of Mention Notice upon the Plaintiff.*

3. *THAT on the same day I proceeded to Jamji Factory within Kericho County the last physical address where the Plaintiff used to work and on inquiries from the management of the factory left the employment and there in not in contact with the said Plaintiff.*

4. *THAT have not been able to serve the Plaintiff since his last contact is unknown and now return to court unserved.*

5. *THAT what is stated herein is true to the best of my knowledge and belief.*

On the background of the Affidavit of Service, it is clear that no service of process has been effected on the respondent in this appeal. The submission of service by the appellant on 22nd June, 2018 is not in any way founded in the circumstances. The appeal cannot therefore stand or go for judgement.

I am therefore inclined to strike out the appeal with orders that the parties bear their own costs of the same.

Delivered, dated and signed this 29th day of June 2018.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr Koech instructed by Bett & Company Advocates for the appellant
2. No appearance for the respondent.