



REPUBLIC OF KENYA

EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO.269 OF 2015

(Before D. K. N. Marete)

PHILIMON KIPNGENO KIRUI.....CLAIMANT

VERSUS

SOUTH NYANZA SUGAR CO. LTD.....RESPONDENT

JUDGEMENT

This matter was originated by way of an Ammended Memorandum of Claim amended on 3rd May, 2018. It does not display an issue on dispute on its face.

The respondent in an Ammended Response to Statement of Claim amended 4th May, 2018 denies the claim and prays that it be dismissed with costs.

The claimant's case is that sometimes in 2012, he was employed by the respondent as a Tractor Driver at Kshs.700.00 a day. This lasted till May, 2015 when he was verbally dismissed from such employment.

The claimant's further case is that he rendered service diligently with no allegations of misconduct but despite this, he was not paid airtime and to date there is an outstanding wages of Kshs.396,605.00.

The claimants other case is that on 31st November, 2015, he attended a meeting with the Human Resource Manager whereby he was informed that his matter would be sorted out in a week. When he went back to check on the progress, he was frog marched out of the respondents premises by the company guards. This was a gross violation of his rights to personal dignity and psychological integrity out of which he suffered loss and damage.

He prays as follows;

a) The respondent pay to the claimant unlawful deduction of his salaries for the period between 2012 and 2015 amounting to over Kshs.396,605.00/-

b) The court be pleased to order the Respondent to release the Claimants Original Driving License.

c) That conduct by the Defendant to frog-match the claimant out of the premises violated the plaintiff's rights as to personal dignity and then the claimant is entitled to general damages.

d) General damages for infringement of his constitutional rights to dignity and psychological integrity.....Kshs.3,000,000.00

e) Interest at Court on (a), (c) and (d) above from the date of filing the claim.

f) Costs of this claim.

The respondent's case is an admission that the claimant was employed by herself on a contractual basis but denies that this started in 2012. He earned Kshs.700.00 daily and was paid for the number of days worked and not the whole month as alleged.

The respondent's further case is that if the claimant has not been paid salary arrears amounting to Kshs.396,605.00, there is no evidence that he had demanded the same from the respondent during his stint of service. She in all denies all allegations by the claimant against herself and prays that the claim be dismissed with costs.

The matter came to court variously until the 17th of May, 2018 when it was heard *inter partes*.

The issues for determination therefore are;

1. Whether there was a termination of the employment of the claimant by the respondent?
2. Was the termination of the employment of the claimant wrongful, unfair and unlawful?
3. Is the claimant entitled to the relief sought?
4. Who bears the costs of this claim?

The 1st issue for determination is whether there was a termination of the employment of the claimant by the respondent. This is variously answered by the respective parties.

At the hearing, CW1 – Philemon Kipngeno Kirui duly affirmed testified in reiteration of his case as pleaded. He also produced all documents in his lists of documents dated 15th January, 2015 (Exhibit 1 – 5) and his witness statements and prayed that this be adopted as his evidence in support of the claim.

On cross-examination he testified that he worked on a daily basis but did not have documents to establish that. He further testified that in 2012 he was not paid Kshs.21,660.00 being paid for the whole year. In 2013 he was owed Kshs.127,332.00. In 2015, he signed a contract for the whole year that he was only allowed to work for 5 months. He would not continue working due to some misunderstanding and was locked out by the security. He was however paid.

DW1 – Romanas Odino Nyanjun duly affirmed testified that he has worked for the respondent for 27 years. He knew the claimant. The claimant did not work on a daily basis. He was not owed a farthing by the respondent and received all his pay on departure. His driving license was also returned to him for renewal and never returned back to the respondent.

DW2- Duncan Orwa duly affirmed testified that he worked for the respondent and lived in her premises in Migori. He testified that the claimant was not frogmarched from the respondent premises and had not reported to work on the last month of the contract period.

On cross-examination, DW2 reiterated his evidence but was at pain to explain why he had not submitted his list of documents earlier. He also denied that the list of documents was altered.

The claimant in his copies of documents dated 15th January, 2017 files the following documents in support of the claim;

1. Copy of offer of contract Appointment dated 25/01/2013
2. Copy of offer of contract Appointment dated 5/02/2014.
3. Copy of bank statement of the claimant's Account from National Bank for the period between 09/03/2012 up to 30/11/2015
4. The claimant's NSSF Provisional Member Statement for the period between 01/05/2006 up to 31/03/2015
5. Copy of demand letter dated 21/05/2015

The respondent on the other hand enlists the following in her respondents list of documents;

1. Letter dated 22nd July, 2015
2. Contract Requisition form dated 5th December, 2014
3. Land development Drivers Lists for the month of January, 2015
4. Land development Drivers Lists for the month of February, 2015
5. Land development Drivers Lists for the month of March, 2015
6. Land development Drivers Lists for the month of April, 2015
7. Land development Drivers Lists for the month of May, 2015

8. Land development Drivers Lists for the month of June, 2015

The claimant's evidence does not bring out a case of unlawful termination of employment. He does not disclose the reason for termination, if at all. He does not also support the amounts of unpaid dues as claimed. This is all so in his list of documents and evidence tendered in court in support of the claim. The probable case is that of the respondent. The claimant was all this time a casual employee. He therefore has not proved a case of unlawful termination. I therefore find a case of no termination of the employment of the claimant by the respondent and hold as such.

The 2nd issue for determination is whether the termination of the employment of the claimant wrongful, unfair and unlawful. On a case of no termination of employment, this and all other issues for determination dissipate into nothingness. They become irrelevant and non issues.

I am therefore inclined to dismiss the claim with orders that each party bears their own costs of the claim.

Delivered, dated and signed this 12th day of June 2018.

D.K.Njagi Marete

JUDGE

Appearances

1. Miss Koech instructed by Koech, Chepkurui & Company Advocates for the claimant.
2. Miss Mutiria instructed by Moronge & Company Advocates for the respondent.