



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 257 OF 2013

(Before Hon. Justice Hellen S. Wasilwa on 30th July, 2018)

SILFANUS SHAMWATA MUCHALWA CLAIMANT

VERSUS

GARBAGE.COM LIMITED RESPONDENT

JUDGEMENT

1. The Claimant filed their claim on 26.2.2013 in person claiming wrongful and unfair termination of his service and failure by the Respondent to pay his termination benefits.
2. The Claimant's case is that in September 2009, he was employed by the Respondent as a Supervisor earning a monthly salary of 7,000/=.
3. He avers that he served the Respondent with loyalty and utmost diligence until August 2012 when the Respondent wrongfully and unlawfully terminated his services without notice and without paying him his terminal benefits.
4. He seeks payment of 1 month salary in lieu of notice, annual leave payment of 4 years at 21 days per year, severance pay and house allowance all totaling 252,280/=.
5. The Claimant avers that he was employed as a Gardener and given an appointment letter dated 1.7.2011. He avers that he was orally dismissed.
6. The Respondent filed their Memorandum of Response on 30.7.2014 through Njugi B.G 7 Company Advocates. They averred that the dismissal or termination if any was done lawfully and within the confines stipulated by the relevant statutes. They aver that the contract in question commenced on 1.7.2011 and expired on 30.6.2012 and not as alleged by the Claimant.
7. They aver that this contract was contingent to Jomo Kenyatta University of Agriculture and Technology (JKUAT) Karen's extension of its contract with the Respondent.
8. That when the contract with Jomo Kenyatta University of Agriculture and Technology (JKUAT) Karen ended, the Claimant was among others duly served with the requisite termination notices.
9. He Respondent also aver that the Claimant had only 1 leave day pending and therefore the claim is not warranted and they ask Court to dismiss the same.
10. The Respondent called one witness who indicated that the Claimant worked for the Respondent as pleaded on their Response but that the contract ended in June 2012 as it was contingent to their contract with Jomo Kenyatta University of Agriculture and Technology (JKUAT) Karen as per Clause 3 of the said contract. That when Jomo Kenyatta University of Agriculture and Technology (JKUAT) Karen terminated their contract with the Respondent, the claimant was informed accordingly and given a certificate of service.
11. He averred that the Claimant is only entitled to 3 days leave. In cross-examination, the Respondent witness confirmed he did not know when the Claimant was employed by the Respondent but in his documents was the 2009 payslip.
12. He also indicated that their contract with Jomo Kenyatta University of Agriculture and Technology (JKUAT) Karen was not before Court. He indicated that the contract they had was between claimant and Respondent.

13. The parties also filed their respective submissions.

14. I have examined all the evidence of the parties plus the submissions of the parties. From the documents of the Claimant, he was employed by the Respondent before 2011 as indicated by his payslips dating back to May 2009 and running to 2012.

15. The contention by the Respondent that he was employed in 2011 is not therefore true. The RW1 also conceded that the Claimant was always issued with a contract letter in terms of the one dated 1.7.2011.

16. Under Clause 3 of the contract, he was to work as a Cleaner at JKUAT Karen. There is however no indication that this contract was tied to the contract between the Respondent and JKUAT Karen.

17. To show continuity in the relationship between Claimant and Respondent, the Claimant also produced his NSSF statement showing continuous remittances of his NSSF dues by the Respondent from 2010 January to May 2012.

18. It is therefore my finding that the Claimant was an employee of the Respondent on permanent and pensionable terms and these terms were changed to contract terms in 2011 June.

19. The Claimant however knowingly signed the contract dated 1.7.2011 which changed his terms to contract terms from 1.7.2011 to 30th June 2012. Because of this issue, it is my finding that the contract between claimant and Respondent terminated by effluxion of time on 30th June 2012 and the issue of unlawful termination does not arise.

20. The only entitlement for the Claimant is therefore payment of house allowance and leave pay as pleaded and which I award as follows:-

1. Leave days for 3 years = 7 x 7,000= 21,000/=

2. House allowance for 3 years = 15% of 7000 x 36 months = 37,800/=.

Total = 58,800/=

3. The Claimant is also entitled to costs of this suit plus interest at Court rates with effect from the date of this Judgment.

Dated and delivered in open Court this 30th day of July, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Mr. Mucheru holding brief for Onyancha for Claimant – Present

Respondent – Absent