



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MALINDI
CAUSE NO 19 OF 2017
MUSAJI INAYAT HUSSEIN.....CLAIMANT
VS
VITROCISSET S.P.A KENYA BRANCH.....RESPONDENT

JUDGMENT

Introduction

1. The Claimant's claim documented by a Memorandum of Claim dated 5th July 2017 and filed in court on 7th July 2017 is for wrongful suspension. The Respondent's defence is contained in a Statement of Response dated 31st July 2017 and filed in court on even date. The Claimant responded to the Respondent's Response on 2nd October 2017.
2. When the matter came up for hearing, the Claimant testified on his own behalf and the Respondent called its Managing Director, Marco Bordin. Both parties further filed written submissions.

The Claimant's Case

3. The Claimant states that he was employed by Italian Space Agency through the Respondent as a specialist technician effective January 2008. Upon his request, the Claimant was granted a two year post retirement extension of contract from 8th August 2016. He worked until 28th June 2017 when he was retired.
4. The Claimant's case is that in retiring him, the Respondent violated his rights by failing to observe due process. He claims the following:
 - a) A declaration that his employment was terminated unprocedurally;
 - b) Reinstatement without loss of benefits and/or seniority;
 - c) Half a month's salary from June 2017 until determination of the suit;
 - d) Exemplary damages for wrongful termination;
 - e) Costs plus interest.

The Respondent's Case

5. In its Response dated 31st July 2017 and filed in court on even date, the Respondent admits that the Claimant was its employee. The Respondent denies giving the Claimant a two year post retirement extension and states that the Claimant was allowed six months' extension twice.
6. The Respondent pleads that the Claimant's employment came to an end upon his attaining the retirement age of 60 years. The Claimant was duly served with a retirement notice which he received and acknowledged. The Respondent adds that upon retirement, the Claimant was paid all his dues.
7. It is the Respondent's case that the termination of the Claimant's employment on the ground of attainment of retirement age was justified.

Further, the retirement was carried out in accordance with the procedure set out in the relevant collective bargaining agreement and the Claimant's employment contract.

Findings and Determination

8. There are two (2) issues for determination in this case:

- 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

9. On 28th June 2016, the Respondent wrote to the Claimant notifying him that he would retire effective 30th August 2016, upon attainment of sixty (60) years. In response to the retirement notice, the Claimant wrote to the Respondent on 29th June 2016 asking for service extension by two years.

10. It is not in contest that the Respondent acceded to the Claimant's request. What is in issue is the extension period granted. The Claimant contends that he was allowed the two year extension he had asked for. On the other hand, the Respondent states that the Claimant was given two extensions of six months each. The Claimant draws his argument from a provision in the notice of retirement issued to him on 28th June 2016 stating as follows:

“Please note that in line with Vitrociset's option to retain workers at work beyond the legally specified age (As was the case under ASI-Article 3 of the policy, aforementioned), you have two (2) months within which to reply to us in written form, asking to be maintained at work, specifying the reasons why you want to keep on working and the age limit (upto 62 or 65 old).”

11. The Claimant argues that the aforesaid provision gives only two options for extension of employment; either by two years terminating at 62 years or five years terminating at 65 years. He therefore maintains that having taken the first option of a two year extension, he was entitled to work for the full two years up to the age of 62 years.

12. This case turns on the Claimant's legitimate expectation on the duration of his extended employment post retirement. The Claimant himself told the Court that after his request for extension he was issued with two successive six months' contracts; the first one running from June 2016 to December 2016 and the second one running from January 2017 until June 2017. He was finally retired on 30th June 2017.

13. In his written submissions filed on 22nd June 2018, the Claimant submits that the Respondent's action of granting him two successive six months' contracts led him to believe that his request for a two year post retirement extension had been allowed. He insists that by virtue of the retirement notice dated 28th June 2016, the Respondent could not grant an extension period of less than two years.

14. The Claimant however fails to acknowledge that the same retirement notice expressly provided that extension of service after retirement was at the sole discretion of the Respondent. The relevant portion of the notice states:

“Note however that as clearly spelt out, the ultimate decision over such a request lies solely with Vitrociset. Accordingly, any such resultant decision that may ensue shall remain unquestionable with no appeal allowed against it whatsoever.”

15. This is as clear as can be. Moreover, it is evident that the Respondent responded to the Claimant's request by issuing him with two successive fixed term contracts of six months each. There is now firm jurisprudence from this court to the effect that fixed term contracts lapse at the end of term and therefore carry no provision for automatic renewal (see *Teresa Carlo Omondi v Transparency International-Kenya [2017] eKLR* and *Francis Tonui v Heifer International Kenya [2017] eKLR*).

16. In the instant case, the Claimant was issued with two fixed term contracts which lapsed by effluxion of time. The Court therefore found no basis for the Claimant's expectation that he would work beyond the life of these contracts.

17. The ultimate result is that a claim for unlawful termination of employment does not lie and the Claimant's entire claim consequently fails and is dismissed.

18. Each party will bear their own costs.

19. Orders accordingly.

DATED SIGNED AND DELIVERED AT MALINDI THIS 26TH DAY OF SEPTEMBER 2018.

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JUDGE

Appearance:

Mr. Hassan for the Claimant

Mrs. Gicharu for the Respondent