



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CASE NO. 268 OF 2017

ISAAC MAINA MURIMI.....1ST CLAIMANT

MUEMA NZYOKA.....2ND CLAIMANT

VERSUS

NAIROBI PLASTICS LIMITED.....RESPONDENT

JUDGMENT

1. The Claimants filed this suit against the Respondent seeking remedies for the alleged unlawful dismissal from employment. They averred that they were unceremoniously and without any notice summarily dismissed from their employment on 2nd November 2015. They were to be called back to work but they were not. Their termination was stated to be without a valid reason, fair reason and without giving the Claimants a chance to be heard or notice to show cause why they are not to be dismissed. The Claimants each sought one month's salary *in lieu* of notice Kshs. 16,900/-; payment *in lieu* of untaken leave Kshs. 130,130/-; service pay of Kshs. 92,950/- and compensation for unfair dismissal Kshs. 202,800/-. They also sought costs of the suit and interest on the sums sought.

2. The Respondent in its defence stated that the Claimants were on a six months contract which lapsed and was not renewed. The Respondent averred that the Claimants contracts were on account of the lapse of the letter of employment and therefore lawful and any sums due were fully compensated. It was averred that the claim was incurably defective as the Claimants had concealed material facts and the Respondent thus sought the dismissal of the suit.

3. The parties were heard and in the testimony adduced the Claimants asserted that they never went on leave and that the HR called them on 2nd November 2015, told them to go and wait to be called and they never were called. They therefore sought the sums claimed in the claim. The Respondent's witness Irene Wangu Kahuthia stated that the Claimants had written contracts of service and that the contracts were finite and would be renewed except for the last one which was signed on 2nd May 2015 and was to last for 6 months. She stated the salaries were paid when due and at the time of end of contract a sum of money was paid to the Claimants as their final dues. She testified that the Claimants were not dismissed from employment and that Charles had abused the head of department and was asked to apologise and he declined and instead went home and did not come back while Muema was a chronic absentee therefore the Respondent did not renew their contracts. They were not heard as it was the end of their contracts. She stated that the Claimants had not come for their recommendation letters.

4. The Claimants filed submissions and in the submissions filed isolated the issues for determination to be as follows:-

- a. whether their termination was unfair and unlawful,
- b. whether they were entitled to the reliefs sought and
- c. who was to bear the costs of the suit.

The Claimants argued that before termination, the employer has to follow the provisions in the Employment Act. Reliance was placed on the case of **David Kipkosgei Muttai v Green Palms Academy [2014] eKLR** where the court held that unfair termination occurs where the employment is terminated without a valid and fair reason and without following a fair procedure. Section 43 and 45 of the Employment Act were cited and it was stated that the Claimant was not given a hearing or notice prior to the termination. The Claimant submitted that by dint of Section 15(c) of the Labour Institutions Act and Section 49(1)(c) of the Employment Act he was entitled to compensation for unfair termination. The Claimant thus submitted he was entitled to the reliefs sought.

5. The Respondent submitted that the issues for determination were the nature of engagement of the Claimants at the time of termination of

the employment, whether the termination was unfair, unlawful and wrongful and whether the Claimants are entitled to the reliefs sought. It was submitted that the Claimants were on contract basis and that contracts lapsed and were not renewed. It was submitted that under Section 2 of the Employment Act which was replicated by Section 2 of the Labour Relations Act made provision on fixed term contract such as the one the Claimants had. The Respondent submitted that under Section 47 of the Employment Act, the Claimants had a burden of proving the unfair termination or wrongful dismissal and upon doing so the Respondent was required to justify the grounds for the termination. The Respondent submitted that the contract of employment came to an end as it was for a definite period and cited the case of **Samuel Charles Mwits v Kenya Medical Research Institute [2014] eKLR** where the court stated that a fixed term contract will naturally terminate on the expiry date and the termination thereof will not constitute a dismissal as the termination thereof was not occasioned by an act of the employer and the proximate cause of the termination of employment was not an act of the employer. The Respondent submitted that the giving of notice was not necessary as the contract had a built in termination notice and the Claimants duly cleared and confirmed they had no claim against the Respondent and therefore they were not entitled to any of the reliefs sought.

6. The Respondent's testimony and documents did not accord with the pleadings. The Claimants were not casuals as they had payslips indicating a cumulative employment period beyond the 6 months stated by the Respondent. The contracts exhibited had clauses that run counter to the Employment Act and the Regulation of Wages Order on payment for work undertaken on public holidays and Sundays. In the courts considered view, the termination meted out was unfair in the circumstances. In respect to the alleged misconduct and absenteeism, the Respondent was required to undertake disciplinary processes under Section 41 of the Employment Act before termination. In the finding of the Court, the dismissals were unfair and unlawful and the Claimants were entitled to notice as well as a hearing before dismissal. The claims on leave were not proved and therefore the end result is that the Claimants will be entitled to judgment as against the Respondent as follows:-

a. Isaac Maina Murimi

- i. One month's salary in lieu of notice Kshs. 16,900/-
- ii. 3 month's salary compensation Kshs. 50,700/-
- iii. A certificate of service
- iv. Interest on the sums in i) and ii) above at court rates from the date of judgment until payment in full.

b. Muema Nzyoka

- i. One month's salary in lieu of notice Kshs. 16,900/-
- ii. 3 month's salary compensation Kshs. 50,700/-
- iii. A certificate of service
- iv. Interest on the sums in i) and ii) above at court rates from the date of judgment until payment in full.

7. The Claimants will also have costs of the suit.

It is so ordered.

Dated and delivered at Nyeri this 31st day of October 2018

Nzioki wa Makau

JUDGE