



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA

CAUSE NUMBER 568 OF 2017

BETWEEN

- 1. CHARO WILLIAM**
- 2. DAVID ALUKWE**
- 3. LEO JOSEPH**
- 4. ALI BAKARI**
- 5. KENNEDY SAKWA**
- 6. WAMALWA MWIVANDA**
- 7. KEVIN OUMA**
- 8. GASPER LIKAMI**
- 9. JUMA SAID**
- 10. ELIKANA BUTERE**
- 11. SALIM DULLO**
- 12. BABUYA SAID**
- 13. KADENGE NGUMBAO**
- 14. ALLAN FREDRICK**
- 15. COLLIN OLENDU**
- 16. FRANCIS OKETCH**

VERSUS

READY CONSULTANCY LIMITED.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Nyange Sharia, Advocate for the Claimants

JUDGMENT

1. The Claimants filed their Statement of Claim on 12th July 2017. They state they were employed as Stackers by the Respondent, an Outsourcing Company, on diverse dates between the year 2007 and February 2016. They were outsourced to Mombasa Maize Millers. They earned Kshs. 530 daily, equivalent to Kshs. 15,900 monthly. They aver that the Respondent sent them on immediate transfer to Nairobi. They were not given sufficient notice. They did not accept transfer, and left employment. They were paid terminal dues of Kshs. 22,260. Details of payment were not disclosed. They each claim against the Respondent:-

- a. 1 month salary in lieu of notice.
- b. Annual leave pay for respective years worked.
- c. House allowance.
- d. Service pay.
- e. Off days.
- f. Compensation for unlawful termination.
- g. Certificates of Service to issue.
- h. Any other suitable reliefs.
- i. Costs.

2. The Respondent filed its Statement of Response on 27th February 2018. It is admitted the Claimants were employed by the Respondent. The material dates, terms and conditions of employment are uncontested. They were transferred to Nairobi. They were offered sufficient notice and financial facilitation. They declined transfer and absconded. The Respondent did not dismiss the Claimants; it merely transferred them to Nairobi.

3. The lead Claimant, Charo William, gave evidence on his own behalf and on behalf of his Co-Claimants on 26th February 2018. The Respondent adopted its Submissions and employment documents on record.

4. Charo testified that the Claimants were employed by the Respondent, and assigned work at Mombasa Maize Millers. He was employed in 2007, and dismissed in January 2016. Their boss did not want the Claimants to go on working. The Claimants did not know why. They lodged complaint with the Labour Office. Parties held conciliation meetings at the Labour Office, and concluded a Memorandum of Agreement, exhibit 1 of the Claimants' documents. The Respondent did not honour the Agreement. Instead the Respondent transferred the Claimants to Nairobi with immediate effect. They were paid Kshs. 1,000 for transport and Kshs. 5,000 for accommodation at Nairobi. The money was insufficient. They were then paid terminal dues of Kshs. 21,200 each and dismissed. They signed discharge vouchers, absolving the Respondent from further liability. They filed the Claim because what was paid was not enough.

5. The Respondent confirms in its Submissions that the Claimants were offered transfer to Nairobi. They were paid transport and accommodation. Transfer was in accordance with the Memorandum of Agreement concluded at the Labour Office. The Claimants refused to transfer and absconded. They were part of a larger group of 29 Stackers. Those who agreed to transfer are still in employment.

The Court Finds:-

6. Parties are in agreement that the Claimants were employed by the Respondent as Stackers, assigned to Mombasa Maize Millers. They were employed on diverse dates between 2007 and 2016. There is a Memorandum of Agreement dated 28th January 2016, brokered by the Labour Office Mombasa, which sheds light on the circumstances of the Claimants' separation from the Respondent, in 2016. This Agreement is not a disputed document.

7. The Agreement indicates that there was a dispute between the Claimants and their assigned Employer, Mombasa Maize Millers. It was agreed that if the Respondent decided to transfer any of the Employees assigned to Mombasa Millers from Mombasa Millers, the Respondent would give such Employees at least 1 week notice.

8. The Respondent decided as agreed, to transfer the Claimants and others, to Pembe Millers Limited and Nthiwa Sugar Millers in Nairobi. The letters of transfer indicate transfers were to be effected between 1st February and 7th February 2016. The Claimants were to transfer within 7 days indicated in the letter. This was as given in the Memorandum of Agreement.

9. They were paid transport of Kshs. 1,000 and subsistence of Kshs. 4,000. Other dues would be paid after they reported to their new station. They declined to move. In the view of the Court, the Respondent did not terminate Claimants' contracts. The Claimants took the decision not to relocate to Nairobi. They took terminal benefits and left employment.

10. In *E&LRC Cause Number 525 of 2015 between Andrew Majan Chegero v Ready Consultancy Limited*; and *E&LRC Cause Number 299 of 2015 between Arfaan Kasu v Express Limited Travel Express Group Limited*, the Court held that transfer of an Employee, is an Employer's managerial prerogative. It can only be challenged on limited grounds, such as where, as in the case of *Arfaan Kasu*, transfer is clearly based on ill motive. In *Industrial Court at Nairobi, Cause Number 1241 of 2010 between Hesbon Wanjohi Kahiko v Twiga Chemicals Limited*, the Court held that an Employer has no obligation to justify transfer decision, unless the Employer has a contractual or legal obligation to do so. The Employee's refusal to move to a new station, or section within the same enterprise, was found to amount to insubordination.

11. The Claimants in the present Claim declined to move to Nairobi, even as some of their Colleagues agreed to move, and are still working. Transfer was not based on any ulterior or ill motive, but on a negotiated Agreement brokered by the Labour Office. The Claimants had a dispute with Mombasa Maize Millers, and the Respondent acted reasonably, as an outsourcing firm, by finding the Claimants alternative placement in Nairobi. They were to move between 1st and 7th of February 2016. If they felt the time was too short, or the money too little, the Claimants had the option of going back to negotiations and seek better terms of transfer. They instead opted not to continue working, accepted terminal benefits, and walked out. They discharged the Respondent from present and future liability.

12. They ought to have asked for details of terminal benefits at the time they discharged the Respondent. They committed not to look back, upon signing discharge vouchers. The sums paid were in full and final settlement. They confirmed to have no present or future claims against the Respondent. They did not show to the Court that any contractual or statutory dues were omitted in their terms of full and final settlement. They did not demand for inclusion of any other dues at the time they executed discharge.

23. The Court finds the Claim to have no merit. It is dismissed with no order on the costs.

Dated and delivered at Mombasa this 26th day of October, 2018

James Rika

Judge