



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1613 OF 2014

JOHN ODHIAMBO MBEJA.....CLAIMANT

v

FAST TRACK MANAGEMENT CONSULTANTS LTD.....RESPONDENT

JUDGMENT

1. The Claimant was initially employed by the Respondent in 2008. Around 22 April 2014 he was given a 3 month fixed contract. The contract was to terminate on 21 July 2014.
2. On or around 19 June 2014, the Respondent issued a show cause letter to the Claimant. According to the Respondent, the Claimant declined to receive the letter and thereafter *absconded* from work.
3. On 26 June 2014, the Claimant's advocates wrote to the Respondent contending that it had unfairly terminated the Claimant's employment.
4. The Respondent replied on 1 July 2014 asserting that the Claimant had *deserted* after being asked to show cause how he acquired a confidential document which should not have been in his custody.
5. The Claimant followed the demand by instituting legal proceedings against the Respondent and he stated the Issues in Dispute as *non-payment of employee's dues and wrongful, unfair and unlawful dismissal*.
6. The Respondent filed a Response reiterating the position that the Claimant had absconded from duty and was not entitled to any of the remedies/dues sought.
7. The Cause was heard on 28 June 2018 when the Claimant and Respondent's Supervisor testified and hearing was closed.
8. The Claimant filed written submissions on 24 July 2018 while the Respondent filed its submissions on 10 September 2018.
9. The Court has considered the pleadings, evidence and submissions.

Breach of contract

Unpaid leave

10. An employee is entitled to annual leave and an employer denying an employee leave would be in breach of statute and contract.
11. The Claimant sought Kshs 4,158/- on account of 8 days accrued leave.
12. The Claimant served for about from 22 April 2014 until separation on 18 June 2014, a period less than 2 months and by dint of section 28(1)(b) of the Employment Act, 2007 is not entitled to any pro-rated leave.

Unpaid salary for 5 days

13. The Claimant abandoned this head of claim.

Sick leave for 3 months

14. The Claimant sought Kshs 37,425/- on account of sick leave.

15. The Claimant's testimony was that he got injured on 2 August 2013 but he did not indicate the duration of the sick leave and whether he was given the sick leave by a medical practitioner.

16. The Court is therefore unable to determine whether the Respondent was in any breach or whether the Claimant was entitled to payment during a sick leave for an undisclosed period.

Unfair termination of employment

17. On the circumstances surrounding the separation, the Claimant stated that after he got injured, he sued the Respondent (Limuru CMCC No.366 of 2013) and this infuriated the Respondent causing it to demand that he either withdraws the suit or risk dismissal.

18. The Claimant added that he declined to withdraw the suit, and he was directed to leave.

19. The Respondent's witness on the other hand testified that when the Claimant was found with a confidential document he was asked to show cause but he declined to accept the show cause notice which was given to him in the presence of a named witness. The Claimant instead walked out.

20. The Claimant did not disclose the name or the position of the person who instructed him to leave (Respondent is a juristic person).

21. Without that disclosure, the Court is constrained to find that the Claimant did not discharge the burden placed upon him by section 47(5) of the Employment Act, 2007.

Conclusion

22. The Court in effect finds and holds that the Claimant failed to discharge the burden placed on him by section 47(5) of the Employment Act, 2007, or that there was breach of contract.

23. The Cause is dismissed with no order as to costs.

Delivered, dated and signed in Nairobi on this 26th day of October 2018.

Radido Stephen

Judge

Appearances

For Claimant Mr. Waiganjo instructed by Waiganjo Wachira & Co. Advocates

For Respondent Mr. Namasake instructed by J. N. Namasake & Co. Advocates

Court Assistant Stella