



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 350 OF 2014

(Before Hon. Justice Mathews N. Nduma)

SIMON PETER INGOSICLAIMANT

VERSUS

BOARD OF DIRECTORS EREGI TEACHERS' COLLEGE.....RESPONDENT

J U D G M E N T

1. The Claimant filed suit on 9th December, 2014 seeking maximum compensation for unlawful termination of employment and payment of terminal benefits set out under paragraph 14(a) to (h) of the Statement of Claim. The suit was opposed vide a Memorandum of defence filed on 2nd February, 2015 in which the Claim is denied in its entirety.
2. The Claimant testified under oath whereas the Respondent called RW 1 Leonard Ongugo Odendo, the Bursar of the Respondent to rebut the Claimant's Case.
3. From the Claimant's own case, he states that he was employed by the Respondent as a grounds mason in January, 1997 earning Kshs.1,700 per month. He was retrenched in 1998 and was paid Kshs.7,000 termination gratuity.
4. He was retired in 1999 as a farm foreman earning a monthly salary of Kshs.3,300. He stopped working in June 2007, when the Principal of the school asked him to take a rest but was not recalled.
5. The Claimant was re-employed in August 2009 at a monthly salary of Kshs.5,000. The Claimant worked until 10th June, 2013 when his employment was verbally terminated without notice.
6. The Respondent states that the Claimant was never employed on permanent basis after August 1998. He was occasionally hired on casual basis or on a fixed term contract. That between the years 2007, 2008 and 2009 the claimant did not work at all for the Respondent.
7. The Respondent produced a one month contract signed by the parties for the period 1st June, 2013 to 30th June, 2013 for total cost of Kshs.4,200 for the work done. This appears to be a piece rate agreement and it states that the agreement is not to be construed to be 'employment' by the parties.
8. Another contract dated 1st July, 2013 for 7 days work at a total cost of Kshs.1050 for the work done between 1st July, 2013 and 7th July, 2013 was produced by the Respondent.
9. The Respondent prays that the suit be dismissed since the Claimant was not in any continuous employment with the Respondent as alleged or at all.

Determination

10. The issues for determination are:-

- (i) Whether the Claimant was in continuous employment with the Respondent at the material time.
- (ii) Whether the Claimant is entitled to the reliefs sought.

11. With regard to issue (i) it is apparent that the Claimant was on and off in the employ of the Respondent. Between January 1997 and

August 1998, the Claimant worked for the Respondent at a salary of Kshs.1,700 per month and stopped working in August 1998 and was paid terminal benefits of Kshs.7,000. He was rehired in 1999 at a monthly salary of Ksh.3,300 and worked until June 2007 when the Claimant was told to take a rest and was not recalled until the year 2009 when he was re-employed at a salary of Kshs.5,000.

12. The Claimant purports to have continuously worked for the Respondent until 10th June, 2013 when his employment was verbally terminated.

13. This evidence is contradicted by written piece rate contracts signed between the parties on 1st June, 2013 and 11th July, 2013 respectively. It would appear that the Claimant was not in any continuous employment with the Respondent during the period 1st June, 2013 and 1st July, 2013. It is therefore not true that the Claimant's employment would have been terminated by the Respondent on 10th June, 2013 on the face of a piece rate contract signed on 1st June, 2013 for a period of one month followed by a subsequent piece rate agreement for seven (7) days signed on 1st July, 2013.

14. The Claimant is clearly not candid with the court on the actual work relationship between himself and the Respondent during the material time.

15. Furthermore, any claim by the Claimant for work done between 1997 and June 2007, when his employment was terminated is time barred by virtue of Limitations of Actions Act, Cap 22 Laws of Kenya. The Act, prohibits filing of a suit based on contract six years after the cause of action arose in section 4(1). The Court of Appeal in the case of Devicon prohibits any extension of time by any court for a cause of action based on contract. The latter part of the claim is discredited by my earlier observations and is also dismissed for lack of merit.

16. Accordingly, all the reliefs set out under paragraph 14 of the Memorandum of Claim have not been proved on a balance of probabilities and are dismissed.

17. Each party to bear their own cost of the suit, the Respondent being a public entity and the Claimant being evidently of meagre means.

Judgment Dated, Signed and delivered this 25th day of October, 2018

Mathews N. Nduma

Judge

Appearances

Mr. Osango for the Claimant

Mr. Fwaya for Respondent Chrispo – Court Clerk