



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA
AT NAIROBI
CAUSE NO 559 OF 2011

BENARD BARASA OUMA

JENEFESA NABWIRE JUMA &

ALEX BARASA NASIEKU (suing as the

personal representatives of the estate of

BENARD BARASA OUMA (DECEASED).....CLAIMANT

VERSUS

STEEL STRUCTURES LIMITED.....RESPONDENT

JUDGEMENT

1. The claimant herein has since been deceased filed the claim alleging he was respondent's employee working as a watchman cum dog handler and florist at a monthly salary of Kshs 15,000/=. He pleaded that he worked for the respondent until 9th April, 2008 when the respondent terminated his service without giving him notice or paying him terminal dues. The claimant further averred that the respondent refused to pay him for his services as a florist and a dog handler.

2. On 4th December, 2017 the respondent filed a preliminary objection that the suit herein was statute barred. This objection has to be decided first before anything else. According to the statement of claim, the claimant was dismissed on 9th April, 2008 and the claim herein filed on 8th April, 2011 thus was within the three year period prescribed by the Act. The claim is therefore no statute barred. The claimant averred that he was employed as a watchman cum florist and dog handler yet the respondent only paid him for his duties as a watchman but ignored to pay him for dog handling and florist duties.

3. The claimant's contract provided that he was to be employed initially as a watchman but his functions and duties could be altered at the discretion of the management. The letter of appointment was exhibited by the claimant in his bundle of documents. The claim therefore by the claimant that he worked as guard and dog handler cum florist is not sustainable because his contract permitted the respondent to assign him other duties in any event it is common knowledge that dog handling is synonymous with guard duties and cannot be said to be a separate job.

4. The claimant has claimed a daily wage for Kshs 356 per day for dog handling duties and Kshs 370 per day for flower watering for fourteen years. No evidence or document has been attached or pleaded as basis for this claim. This aspect of the claim will therefore be disallowed.

5. The respondent did not give any defence but called a witness during the trial a Mr Francis Njenga. Mr Njenga stated that the claimant was once caught trying to smuggle out four litres of paint. This issue was however captured in the dismissal letter. The claimant was dismissed on 9th April, 2008 hence the applicable law was the repealed Employment Act Cap 226. Under that Act, there was no obligation to assign reason for terminating an employee's services nor was it a requirement that before the termination an employee would be taken through a disciplinary hearing. The respondent therefore had no obligation to give reason for terminating the claimant's services. The respondent however did not file any defence to the claim and instead relied on the preliminary objection.

6. In the circumstances, the court will award the claimant as follows:

Kshs

a. One month's salary 15,000

b. Service pay at the rate of 15 days

salary for each completed year of service

(15,000/30 x13) 65,000

Total **80,000**

c. Costs of the suit

7. It is so ordered.

Dated at Nairobi this 5th day of October, 2018

Abuodha Jorum Nelson

Judge

Delivered this 5th day of October, 2018

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.