



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO. 1225 2013**

**GEORGE OKOTH.....CLAIMANT**

**VERSUS**

**HUI YI CO. LIMITED.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Claimant brought this suit on 7.8.2013 alleging that his contract of service was wrongfully terminated by the respondent on 29.9.2012 and his terminal dues withheld. He therefore prayed for the following reliefs:-

- (a) Overtime.....14,600/=**
  - (b) Salary for 3 weeks in lieu of notice.....7000/=**
  - (c) House Allowance.....24000/=**
  - (d) 60 rest days.....27000/=**
  - (e) Compensation.....120000/=**
- Total: **219,600/=**

2. The respondent filed her defence on 28.8.2013 denying the alleged wrongful termination. She averred that the termination of the contract of service was done by the Claimant by absconding and/or deserting his work from 29.9.2012 without any reason or service of prior notice. She further averred that the Claimant and his union reported a dispute to the Labour officer and after conciliation the matter was resolved by a final settlement agreement whereby she paid the Claimant Kshs.16,170. She therefore objected to the suit contending that it is incompetent because of the said settlement agreement before the Labour Officer.

3. The suit was heard on 15.10.2018 when the Claimant testified as C.W.1 but the respondent never attended the hearing to offer her defence. After the hearing, the Claimant filed written submissions.

**Claimant's Case**

4. C.W.1 testified that he was verbally employed by the respondent on 27.6.2011 as a General Labourer earning Kshs.400 per day. However, the employer used to allocate piece work and if one finished early, he could go home. On 28.9.2012, he worked as usual and finished his piece work at 4.30 pm but the employer started complaining and as such the Claimant continued working until 5 pm.

5. On 29.9.2012 C.W. 1 reported to work as usual but he was terminated and he reported the matter to the Labour Officer. He further testified that the employer was summoned by the Labour officer where she paid him Kshs.15000. C.W.1 further stated that the said money was the wages for the week he was dismissed and contended that he is still owed one month's salary in lieu of notice, accrued leave compensation for unfair termination and Certificate of Service. He therefore prayed for the reliefs sought in his Statement of Claim.

6. There is no dispute that the Claimant was employed by the respondent as a General Labourer from 27.6.2011 to 29.9.2012. The issues for determination are:

(a) Whether this suit is incompetent for seeking to litigate over a settled dispute.

(b) Whether the Claimant deserted work or he was wrongfully dismissed.

(c) Whether the claimant is entitled to the reliefs sought.

### **Incompetent Suit**

7. The Claimant pleaded in paragraph 2.3 and 2.4 as follows:-

***“2.3 THAT, the matter was reported to the Labour Officer and the 1st meeting held on 12th February, 2013, an agreement reached which has not been honoured to date – Appendix – 1.***

***2.4 THAT, Labour Officer called (second) meeting which was held on 11/7/2013 and an agreement reached has not been honoured. Procedure was outlined as Provision 37/74/75 of the Employment Act, 2007. Therefore I am claiming for the balance (Both meetings employer failed to produce the records) instead he produced unfilled form Appendix – 2/3.”***

8. The foregoing was corroborated by the respondent's defence in paragraph 6, 7 and 8 in the following terms:-

***“6. THAT a meeting was arranged between the Claimant, Union officials and Labour Officer and after full deliberation and taking into account all issues involve, the matter was voluntarily and amicably resolved.***

***7. THAT they negotiated and agreed the amount towards full and final settlement between the Claimant and the Respondent was a sum of Kshs.16170 which the Claimant acknowledged payment and receipt and further acknowledged that he has no further claim against the respondent (attached hereto and marked Appendix 1) is a true copy of the settlement agreement.***

***8. THAT the Claimant and the Respondent signed the negotiated agreement in the presence of the union official and the Labour officer and the matter was finally marked as settled.”***

9. In view of the said pleadings, it is common knowledge that the dispute herein was reported to the Labour Officer and conciliation was done. The Claimant acknowledged the said settlement but contended that it was not fully honoured and as such he was pursuing the balance by this suit. I have perused Exhibit Appendix 2 from the Claimant which is an unsigned agreement dated 11.7.2013 listing down items for negotiations.

10. The said document corresponds with the settlement agreement annexed to the respondent's defence (Appendix 1) which lists down only 3 out of the 7 items discussed. The agreed items include 7 days' notice, 24.5 leave days and 7 public holidays valued at Kshs.16,170.

The Agreement annexed to the defence is signed by the Claimant and respondent's Representative in the presence of the Labour Officer who also signed and stamped. The settlement agreement describes the Kshs.16170 as full and final dues and that no other claim whatsoever shall be made against the respondent.

11. The Claimant has not pleaded that the said agreement was signed under duress, mistake, misrepresentation or undue influence. He therefore signed it freely in a government office and in the presence of the Labour Officer. The agreement is therefore binding on him because the respondent acted on it to his detriment while the Claimant drew benefit from the same. He cannot therefore walk away from it without evidence of any vitiating factor. Consequently, I return that this dispute was conciliated before the Labour Officer, a resolution was reached through written settlement agreement dated 18.7.2013 whereby the Claimant accepted the agreed dues as full and final settlement and discharged the respondent from any further Claims whatsoever.

12. In view of the foregoing I do not think that this suit is competently before the Court. Once parties refer their disputes to the Labour Officer for Conciliation and a resolution is reached and settlement agreement signed, such dispute should not be recycled before this court. Such conduct would not only be an abuse of Court process but it is also likely to deter contestants from resolving their disputes through Alternative Dispute Resolution. Although Section 47(3) of the Employment Act provides that the right to lodge complaint to the Labour Office is in addition to sue for the same issue in Court, I believe that the right is extinguished by a settlement agreement with recommendations by the Labour officer under Section 49 once accepted by the parties. Consequently, I find and hold that this suit is incompetent and improperly before the Court.

13. I will therefore not deal with the remaining issue of unfair termination and compensation because they were dealt with in the Conciliation proceeding before the Labour Officer. In any event, the settlement agreement contained an admission by the Claimant that he voluntarily resigned from the respondent company on 29.9.2012. Considering the said admission, I would quickly hold that the suit does not disclose a reasonable cause of action against the respondent.

### **Conclusion and Disposition**

14. I have found that the dispute herein was voluntarily resolved before the Labour Officer by a written agreement dated 18.7.2013 signed between the parties herein and witnessed by Labour Officer. I have further found that the said settlement agreement is binding on the parties in the absence of any vitiating factors. I have further found that the agreement cannot be swept under the carpet after the respondent acted upon it to her detriment and after the Claimant drew benefits therefrom.

Consequently, in order to encourage Alternative Dispute Resolution, I decline to allow a resolved dispute from being recycled before this Court. The suit is dismissed with no order for costs.

**Dated, Signed and Delivered in Open Court at Nairobi this 14th day of December, 2018**

**ONESMUS N. MAKAU**

**JUDGE**