



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 623 OF 2016

BETWEEN

HARRY MKUNGURU GEGE.....CLAIMANT

VERSUS

L.A.B INTERNATIONAL KENYA LIMITED.....RESPONDENT

RULING

1. The Claimant sued his former Employer, through a Statement of Claim filed on 24th August 2016. He states he was employed by the Respondent on 10th January 2011 as a Driver. His contract was terminated by the Respondent on 19th September 2014, in circumstances he considers to have been unfair. He seeks Judgment against the Respondent on the following terms:-

- a) Declaration that termination was unfair.
- b) Terminal benefits and compensation for unfair termination totaling Kshs. 332,232.
- c) Costs.
- d) Interest.
- e) Certificate of Service to issue.

2. The Respondent filed its Statement of Response on 5th October 2016. The Respondent denies to have terminated the Claimant's contract unfairly. After filing the Claim, the Claimant was paid by the Respondent upon demand, a sum of Kshs. 49,032 expressed to be full and final settlement. The Respondent urges the Court to dismiss the Claim.

3. On 16th September 2016, the Claimant met Respondent's Management, and agreed on the following, in writing:-

- The Claimant accepted termination letter dated 18th September 2014.
- The Claimant accepted terminal dues, computed by Respondent's Auditors at Kshs. 49,032.
- The Claimant confirmed after receiving the full amount, he would have no claims whatsoever against the Respondent.
- Any proceedings brought against the Respondent with regard to the dispute, are terminated with immediate effect, with costs to the Respondent.

4. The Respondent subsequently filed an Application dated 15th February 2017, asking the Court to order that the Claim has fully been settled. The Application is based on the agreement between the Claimant and the Respondent, whose details are captured above.

5. The Claimant is opposed to the Application. He argues in his Replying Affidavit sworn on 7th November 2017, that he was forced by the Respondent to sign the agreement of 16th September 2016. He was threatened if he did not accept the amount, Police would be called in and arrest the Claimant. Feeling helpless, he accepted the sum of Kshs. 49,032. He believed acceptance did not foreclose the Claim.

The Court Find:-

6. The Claimant is represented by an Advocate. His Advocate was still on record when the Claimant opted to visit his former Employer surreptitiously, and compromise his Claim. He made his Advocate's work, from the date of this visit, very unpleasant. The Claimant's Advocate made an Application to cease acting after learning the Claim has been compromised, but later opted to continue acting for the Claimant. The Court does not think the Claimant was in any way coerced into signing the agreement with his former Employer, and into accepting the sum of Kshs. 49,032. He did not contact his Advocate and seek the assistance of his Advocate, for being threatened by his Employer. He did not seek the intervention of his Advocate against the threat of being arrested by the Police. These are wild allegations made by the Claimant, in the hope that the Court can allow him to pursue more money, than he received from the Respondent out of Court. The Claimant went to his former Employer consciously, and accepted what was offered by his former Employer, as terminal benefits, voluntarily. There is no need for the Court to prolong a dispute which has been settled by the Parties at their own level.

IT IS ORDERED:-

- a) The Application by the Respondent dated 15th February 2017 is allowed.*
- b) The matter is marked as settled and file closed, on terms agreed to by the Parties.*
- c) There shall however, be no order on the costs.*

Dated and delivered at Mombasa this 14th day of December 2018.

James Rika

Judge