



**Mutua v Danree Limited (Cause 1078 of 2013)
[2018] KEELRC 238 (KLR) (14 December 2018) (Judgment)**

Alexander Mutua v Danree Limited[2018] eKLR

Neutral citation: [2018] KEELRC 238 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1078 OF 2013
ON MAKAU, J
DECEMBER 14, 2018**

BETWEEN

ALEXANDER MUTUA CLAIMANT

AND

DANREE LIMITED RESPONDENT

JUDGMENT

Introduction

1. The claimant brought this suit on 15.7.2013 alleging that his employment contract had been unfairly terminated by the respondent on 22.1.2013. He therefore prayed for the following reliefs:-
 - (i) One month's salary in lieu of notice.....Kshs.11,620/=
 - (ii) Payment in lieu of untaken and unpaid leave for one and a half years, being
Kshs.11,620/= x 1 ½ yearsKshs.17,430/=
 - (iii) Payment in lieu of unpaid house allowance calculated at 15% of 11,620 x 18 months
being..Kshs.31,374/=
 - (iv) Compensatory Damages for wrongful unlawful and unfair termination calculated at 12
months gross salary being
Kshs.11,620/= x 12 months.....Kshs.139,440/=

Total Claim Kshs.199,864/
=====



2. The respondent filed her defence on 29.8.2013 contending that she employed the claimant on casual basis as and when his services were required and denied even engaging him in any continuous employment. She further denied the alleged unfair termination of the claimant's employment and averred that he is not entitled to the reliefs sought.
3. On 24.10.2018, the counsel for both parties agreed to dispense with oral testimonies and agreed to rely on their pleadings written statements and documents filed in support and proceed to file written submissions.

Claimant's Case

4. The claimant stated in his written statement that he was employed by the respondent on 6.6.2011 as a loader earning a daily wage of Kshs.415 per day. That he then worked continuously until 22.1.2013 when on arrival to work as usual, he was blocked by the security guards. That shortly thereafter the respondent's HR Officer M/s Tecla came to the gate and told him that his services were no longer required.
5. The claimant contended that the termination of his services was unfair and unlawful because there was no valid reason for his dismissal and he was dismissed without being accorded a hearing. He therefore prayed for his terminal dues plus compensation for unfair termination of his contract of employment, as prayed in his claim.

Defence Case

6. The respondent submitted that the claimant was a casual worker earning Kshs.415 per day and he was never elevated to a permanent employee. She maintained that she only hired the claimant on need basis and for a daily wage. She therefore denied ever engaging the claimant for monthly salary of Kshs.11,620. She further denied the claim for accrued leave and contended that the claimant was only engaged on day to day basis.

Analysis and determination

7. There is no dispute that the claimant worked for the respondent as a loader between 6.6.2011 and 22.1.2013 on casual basis. The issues for determination are:
 - a) Whether the claimant was employed on casual basis intermittently or continuously;
 - b) Whether his casual employment converted to a term contract
 - c) Whether the claimant's contract of service was unfairly terminated. d) Whether the reliefs sought should be granted

Intermittent or Continuous Casual work

8. The burden of proof in these issues is upon the claimant to prove that he was indeed in continuous employment by the respondent though on casual basis. He however produced no evidence or called any of his colleagues or former colleagues to support his allegation that he worked continuously. I do not believe that it is enough for an employee to plead that he was in continuous casual employment and expect the burden of prove to shift to the employer.
9. After careful consideration of the material presented to the court herein, I find that the claimant has not proved on a balance of probability that he worked for the respondent continuously on casual basis upto 22.1.2013. He has also not proved by evidence that he was indeed dismissed on 22.1.2013 by M/



s Tecla. If that was true, he should have called the other colleagues who were dismissed with him on that day as his witnesses.

10. Flowing from the foregoing I find and hold that this suit lacks merits and discloses no reasonable course of action. There is no evidence of conversion from casual to term contract capable of being terminated unfairly. Judicial time will not be wasted in answering the other 3 questions framed above for the sake of it.

Conclusion and Disposition

11. I have found that the claimant has not proved that he worked for the respondent on casual basis continuously from 6.6.2011 to 22.1.2013. I have further found that without proof of continuous service, the claimant's casual employment was not capable of converting to a term contract capable of being terminated unfairly as he alleges. I have also found that the materials presented by the claimant do not disclose a reasonable cause of action. Consequently, I dismiss the suit with no costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 14TH DAY OF DECEMBER, 2018.

ONESMUS N. MAKAU JUDGE

