



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1294 OF 2013

WILLIAM TONY ANG'WEYA.....CLAIMANT

- VERSUS -

SAROVA HOTELS LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 14th December, 2018)

JUDGMENT

The claimant filed the memorandum of claim on 14.08.2013 through S.J. Nyang & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) A declaration that the dismissal was wrongful, unlawful, illegal, biased, and malicious hence null and void.
- b) A declaration that the employment be treated as terminated on the date of clearance on 02.12.2011.
- c) Payment be made for the months from the date of termination of 29.09.1997 up to and including the said 02.12.2011 at Kshs. 28, 389.00 plus yearly and promotional increment which ought to have been as at to date.
- d) Payment in lieu of notice for four months as prayed above.
- e) Payment of salary outstanding for September 1997.
- f) Payment for leave days outstanding as particularised.
- g) Payment of service for the years worked up to and including 02.12.2011.
- h) The respondent to pay the claimant his final dues as stated in the statement of claim.
- i) The respondent to issue a certificate of service to the claimant from the date of judgment herein and years pending be paid for.
- j) The respondent to pay general damages for wrongful and unlawful dismissal.
- k) That the respondent to pay for the costs of the suit and interest on the specials as stated in the memorandum of claim.

The claimant's case is that the respondent employed him as a purchasing officer effective 01.01.1992 and as at termination the claimant earned Kshs. 28, 389.00. On 18.09.1997 Kodak (K) Company Ltd delivered certain promotional items to the respondent but which the claimant says were converted by the respondent's other employees one C.M. Muriuki and Joseph Kabuthi. The fact of the conversion was conveyed to the claimant by the store keeper one Mungusa and the claimant reported the conversion to the respondent's group operations manager because the two implicated persons were senior to the claimant. The claimant was summoned to a meeting of the respondent's senior managers on 18.09.1997 to clarify the report he had made about the conversion but his case is that his statement and explanation was disregarded and he was dismissed from employment. After the meeting of 18.09.1997 the claimant was suspended and locked out from his office for 7 days, then 3 days and on 29.09.1997 he received the dismissal letter. The summary dismissal was effective 29.09.1997. The claimant appealed against the dismissal on 03.10.1997 and it was rejected. A 2nd appeal was made but not replied to. On 1st and 2nd December 2011 the claimant went to clear but was not paid his dues. In Miscellaneous Application No. 34 of 2012 the Court granted the claimant leave to file the present suit.

The 1st issue for determination is whether the claimant is entitled to the terminal dues as set out in the letter of summary dismissal. The

payment for the terminal dues would be after clearance. It is not in dispute that the respondent allowed the claimant to clear on 1st and 2nd December 2011. The Court considers that the respondent's conduct of allowing the claimant to clear belatedly amounted to an acknowledgement under the Limitation of Actions Act that the claimant was entitled to the dues as per the letter. In the submissions the respondent further states that the claimant would only be allowed one month pay in lieu of termination notice. Thus the Court finds that the claimant is entitled as follows:

- a) Pay up to 29.09.1997 Kshs. 27, 442.70.
- b) 34 pending leave days Kshs. 37, 124.08.
- c) Prorate leave travel allowance Kshs. 4, 184.62.
- d) One month notice pay Kshs. 28, 386.00.
- e) Total pay **Kshs. 97, 137.40.**
- f) The claimant is entitled to a certificate of service for the period served 01.01.1992 to 29.09.1997 and the same is justified after the claimant cleared on 02.12.2011.

To answer the 2nd issue for determination the Court returns that the claimant is not entitled to pay from 29.09.1997 to the date of clearance 02.12.2011 because he had already been dismissed, he did not work and the claim was not justified at all.

To answer the 3rd issue for determination the Court returns that the claimant's other claims were time barred and as there was no jurisdiction for the Court to extend the time of limitation, they will fail accordingly and will not be considered on merits. The claimant was dismissed on 29.09.1997, he filed suit on 14.08.2013, and which was 16 years after the 6 years of limitation in section 4(1) of the Limitation of Actions Act – the time of limitation having lapsed on or about 29.09.2003 as submitted for the respondent.

In conclusion judgment is hereby entered for the claimant against the respondent for:

- a) Payment of the terminal dues in the sum of **Kshs. 97, 137.40** by 31.01.2019 failing interest to be payable thereon at Court rates from the date of clearance 02.12.2011 till full payment.
- b) The respondent to deliver a certificate of service by 31.01.2019.
- c) The respondent to pay costs of the suit.

Signed, dated and delivered in court at Nairobi this Friday 14th December, 2018.

BYRAM ONGAYA

JUDGE