



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO. 74 OF 2016

(Before D. K. N. Marete)

JOHN KIPRUTO KEMBOI.....CLAIMANT

VERSUS

EASTERN KENYA PRODUCE(KAPSUMBEYWO).....RESPONDENT

JUDGEMENT

The matter is brought to court vide a Memorandum of Claim dated 22nd March, 2016. The issue in dispute is therein cited as;

“John Kipruto Kemboi being aggrieved by breach of contract of employment files the claim herein.”

The Respondent in a Reply to Memorandum of Claim dated 4th June, 2016 denies the claim and prays that the same be struck out and dismissed with costs.

The claimant's case is that at all material times to this suit, he was an employee of the respondent, having been employed as a tea plucker in June, 2005. His salary was Kshs. 10,000.00 per month.

The claimant's further case is that due to his diligence, hardwork and exemplary performance, he continued to rise in earnings and responsibilities.

On 21st January, 2016, the respondent without any just cause or reason arbitrarily and summarily dismissed the claimant without notice or justification.

7.This was ill intended, unlawful, tainted with illegality, malice, breach of terms and conditions of employment, null and void and negligent as more particularized hereunder.

i. Failing to give reason and or proper notice as to the claimant's termination.

ii. The termination was contrary to the rules of natural justice generally and the laws of employment.

iii. Acting unilaterally without according the claimant a chance and/or fair hearing.

iv. Violating the contract of employment contrary to employment legislation.

v. *The decision to terminate the claimant was arbitrary.*

It is the claimant's other case that this termination was unlawful, unfair, unprocedural and contrary to law.

He prays as follows;

- (a) *A declaration that the action of termination of the claimant was malicious, unfair, unsubstantiated, unlawful and un-procedural in the eyes of the relevant laws.*
- (b) *An award of a maximum compensation for unlawful and unfair termination as provided by the law.*
- (c) *The general damages suffered as a result of the respondent's acts.*
- (d) *An order for payment of due salary in lieu of notice and allowances for the months when the claimant worked but was never paid.*
- (e) *A declaration that the claimant was being underpaid by the respondent and therefore be paid lawfully all outstanding legal and appropriate dues.*
- (f) *Costs and Interest on (b), (d) and (e)*
- (g) *Any other reliefs as this Honourable court might deem fit to grant.*

The respondent's case is an outright denial of the claim. She ends by posting that the claimant has no reasonable cause of action and that the claim is an abuse of the process of court and therefore material for dismissal with costs.

This matter came to court severally until the 21st July, 2016 when the parties agreed on a disposal way of written submissions.

The issues for determination therefore are;

1. Whether there was a termination of the employment of the claimant by the respondent?
2. Whether the claimant is entitled to the relief sought?
3. Who bears the costs of the claim?

The 1st issue for determination is whether the termination of the employment of the claimant by the respondent. The claimant in support of the claim annexes the following documents;

1. *Pay slips from January 2006 until the year 2016*
2. *National Identity card.*
3. *Statement for National Social Security Fund.*
4. *Statement for National Hospital Insurance.*
5.

It is his submission that these support a permanent and pensionable retirement by the respondent.

The respondent in rebuttal submits that a claimant who was employed and a fixed term contract dated 25th August, 2015. It is her further submission that the claimant was employed as a tea plucker on 1st

September, 2015 and the five months contract was supposed to end on 31st January, 2016. Before the close of the term, the claimant resigned from employment vide a letter dated 20th January, 2016 addressed to the Divisional Manager, Khartoum Division. He was cleared on 22nd January, 2016 and accordingly left employment.

The respondent in support of the defence annexes the following documents in a list of documents dated 3rd June, 2016;

1. *Notice of termination of fixed term contract.*
2. *Letter of resignation from John Kiprof Kemboi.*

She further annexes the following documents in a supplementary list of documents dated 19th July, 2016;

1. *Payslip for January 2016.*
2. *Attendance checklist for the period 1st January, 2016 to 31st January, 2016*

This is also replicated in the respondent's witness statement of Philip Melly dated 3rd June, 2016.

It is clear the respondent's case overwhelms that of the claimant. The claimant's documents in support of the claim do not establish a claim *vis-a-vis* the rebuttal by the defence. It would appear that the claimant was enlisted on a fixed term contract from which he opted out through voluntary resignation. He does not contradict this in evidence, or at all. I therefore find a case of no termination of the employment of the claimant by the respondent. And this answers the 1st issue for determination.

The 2nd issue for determination is whether the claimant is entitled to the relief sought. He is not. Having lost on a case of termination of employment, the claimant would not be entitled to relief, or at all.

I am therefore inclined to dismiss the claim with costs to the respondent. And this answers all the issues for determination.

Delivered, dated and signed this 31st day of January 2017.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Mwita holding brief for Mr. Omusundi instructed by M/s Morgan Omusundi Law Firm for the Claimant.
2. Mr. Bett holding brief for Mr. Kibichiy instructed by Kibichiy & Company Advocates for the Respondent.