



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NUMBER 824 OF 2016

BETWEEN

EDWIN BEITI KIPCHUMBA.....CLAIMANT

VERSUS

NATIONAL BANK OF KENYA LTD.....RESPONDENT

RULING

1. The Claimant has been an Associate Relationship Manager of the Respondent Bank, based at Mombasa.
2. He wrote a resignation letter on 5th October 2016. The following day, he wrote another letter to the Respondent, rescinding the resignation letter. He explained that he was coerced to tender his resignation by his Line Managers and Directors. He rescinded resignation, because the decision was not made of his own free will.
3. The Respondent wrote on 6th October 2016, the same date the Claimant rescinded his earlier decision, accepting resignation.
4. The Claimant filed his Statement of Claim on 17th October 2016. He prays the Court to declare:
 - i. Notice of resignation issued under duress.
 - ii. He is still in the employment of the Respondent.

Alternatively:

- iii. The Respondent is compelled to pay the Claimant the following benefits: 12 months' salary on account of constructive dismissal; accrued annual leave; service pay; general damages for coercion, mistreatment and/or harassment; and any other suitable relief.
 - iv. Costs and Interest.
 - v. Any other relief that this Honourable Court may consider just to grant (Repeated. See above)
5. Accompanying the Statement of Claim is an Application dated 17th October 2016, in which the

Claimant seeks an order barring the Respondent from terminating the Claimant's contract of employment, pending hearing of the Claim. He also prays that the Respondent continues to pay him his monthly salary, in accordance with the terms of employment.

6. The Application is opposed. The Respondent filed a Notice of Preliminary Objection, Grounds of Opposition, and Replying Affidavit sworn by Linet Anyinka, Head of Employee Services, on the 14th November 2016. The gist of the response is that the Claimant resigned voluntarily; there was no duress and/or coercion.

7. The Application was heard on 7th December 2016.

The Court Finds:-

a. The Claimant alleges he was coerced by the Respondent into resignation. At the core of the dispute is whether the Claimant validly terminated his contract of employment or was coerced out of employment by the Respondent.

b. He needs to prove coercion by much more than Affidavit evidence.

c. The substantive dispute revolves around corporate fraud within the Respondent Bank, in which the Claimant is said to have played a significant role.

d. Matters of coercion and fraud cannot be resolved through Affidavits. In determining an interlocutory Application, it would be improper for the Court to make pronouncements on coercion and fraud, without the benefit of hearing the full evidence.

e. *Prima facie*, there is evidence the Claimant initiated termination. He does not dispute he wrote the resignation letter. He even gave the Respondent his reasons for resignation, which seem at odds with coercion. He disputes the circumstances surrounding his resignation. It would be improper for the Court to find at an interlocutory stage, that resignation was coerced. The Claimant needs to schedule his Claim to full hearing, and furnish the Court with irrefutable proof of coercion. He needs to prove his assertion about constructive dismissal. He needs to validate rescission of resignation before the Court.

f. The Employment and Labour Relations Court Act enjoins the Court to balance the interests of Employers and Employees, whether at the interlocutory or final stage of a dispute.

g. The Court must therefore not be pushed into a situation where the Court makes findings at an interlocutory stage, which would prejudice a fair, final disposition.

h. Having carefully listened to the submissions of respective Counsel; and having adequately examined the record;

The Court Orders:-

1. The Claimant shall set down his Claim for full hearing on accelerated basis.

2. Pending hearing and determination of the Claim, the Claimant shall continue to earn half of his monthly salary, at Kshs.74,000.

3. Should he fail to establish coercion, all salaries paid to him shall be repaid to the Respondent, from the date of the alleged resignation.

4. He is to remain in employment on these terms, pending hearing and determination of the Claim.

Dated and delivered at Mombasa this 6th day of February 2017.

James Rika

Judge