



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA
CAUSE NUMBER 141 OF 2015

BETWEEN

LENNOX KATANA HASANTA.....CLAIMANT

VERSUS

REA VIPINGO PLANTATIONS LIMITED.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Ms. Onyango Advocate, instructed by Omollo Onyango & Company Advocates for the Claimant

Ms. Opolo Advocate, instructed by Federation of Kenya Employers for the Respondent

JUDGMENT

1. The Claimant filed his Statement of Claim, on 20th March 2015. He states he was employed by the Respondent Plantations Company as a Turn Boy, earning Kshs. 8,252 per month.
2. He was first employed in the year 2010. He was injured while at work, sometime in November 2014. He sued the Respondent for damages. On 31st December 2014, the Respondent decided not to renew the Claimant's contract, explaining to the Claimant, that his contract of 1 year had expired.
3. The Claimant feels termination was unfair and unlawful and prays the Court to grant to him the following orders, against the Respondent:-
 - a) A declaration that termination was unfair
 - b) 1 month salary in lieu of notice at Kshs. 8,252.
 - c) Compensation at the equivalent of 12 months' salary, at Kshs. 99,032.
 - d) Any other suitable relief.

e) Costs.

4. The Respondent filed its Statement of Response on 17th April 2015. Its position is that it employed the Claimant as a General Labourer, not a Turn Boy. He was employed on short term contracts, which depended on availability of work.

5. He was first issued a contract effective on 1st October 2010, expiring 24th December 2010. There were other short term contracts. The last contract was issued to the Claimant on 2nd January 2014, and lapsed on 31st December 2014. There was no renewal. The Claimant was paid gratuity, and the relationship ended. The contract therefore came to an end by expiry of time. The Respondent did not terminate.

6. Parties agreed in Court on 17th November 2016, to have the dispute determined on the strength of their Pleadings, Documents and Submissions on record.

Claimant's Case

7. He submits he was employed as a Turn Boy, earning Kshs. 8,252. He worked from the year 2010 to December 2014. The Respondent did not renew the Claimant's Contract, contrary to previous practice. He was dismissed for having sued the Respondent for work injury compensation.

8. The Claimant urges the Court to adopt the decision of United Nations Appeals Tribunal in ***Case No. 2010 – 125 between Frenchon v. the Secretary General of United Nations***, where it was concluded the Employee's contract was terminated by the Employer, because of service incurred injuries; the Employee's fixed term contract was infact terminated and it was disingenuous for the Employer to argue that the contract was allowed to run until the end of the term and was not renewed on medical grounds; and that the decision not to renew was informed by improper motive.

Respondent's Case

9. The Respondent's position is that the Claimant was a General Labourer, employed on fixed short term contracts, the last which expired on 31st December 2014. It was not renewed on expiry.

10. Termination was not instigated by the Respondent. Relying on the decision of this Court in ***Isaiah Makokha v. Basco Products (K) Limited (2014) e-KLR***, the Respondent submits that non-renewal of a fixed term contract with no clause on (automatic) renewal cannot and does not fall under or amount to unfair termination/wrongful dismissal.

The Court Finds:-

11. The Claimant signed various short term contracts with the Respondent, between the year 2010 and 2014. In all of them, he was described, and the Court concludes he was, a General Labourer. His assertion that he was a Turn Boy is not supported by the documents on record.

12. The Employment and Labour Relations Court has concluded in several cases, that fixed term contracts on their own, carry no expectation of renewal.

13. An Employer's decision not to renew an Employee's expired contract, can only be challenged on limited grounds.

14. These grounds include where the actions of an Employer give rise to expectation on the part of an Employee that there would be renewal. Secondly, where the decision is based on an improper motive or there are countervailing circumstances.

15. Unfortunately, in this dispute, the Claimant has not shown the Respondent's decision not to renew his

contract, was based on an improper motive, or that there were countervailing circumstances.

16. He alludes to a suit he filed against the Respondent for work injury compensation in November 2014, as being the reason why Respondent declined to renew his contract. Details of the work injury, and the ensuing Suit, were not given to this Court, to enable the Court evaluate if there was an improper motive in Respondent's decision.

17. The nature of the Claimant's work – general labour within a Plantation – suggests to the Court there was no firm ground for the Claimant to expect renewal. He signed each and every contract and accepted the terms and conditions of service. He received terminal dues, including gratuity, at the end of every contract. He was offered general work, when such work was available.

18. The last contract stipulated it would terminate automatically upon lapse of the given period. No notice of termination would be given, except in the event termination came before the expiry date.

19. These clauses militate against the Claimant's submission that the Respondent unfairly terminated his contract; or that the Claimant had legitimate expectation of renewal.

20. There are certain aspects of the Parties' relationship which would have been clarified by production of the prevailing Collective Bargaining Agreement. The Claimant's contract repeatedly alluded to the presence of a CBA. Production of that CBA may have assisted the Court have a full view of the relationship, particularly on the nature of the Claimant's contract, and mode of termination.

21. Based on the evidence on record, there is no case made out by the Claimant that his contract was unfairly terminated by the Respondent; that the Respondent was driven by improper motive in refusing to renew; and that the Claimant had legitimate expectation of renewal.

IT IS ORDERED:-

a) The Claim has no merit and is declined.

b) No order on the costs.

Dated and delivered at Mombasa this 31st day of March 2017.

James Rika

Judge