



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO. 8 OF 2016

JAMES KARANJA MWANGI.....CLAIMANT

-VERSUS-

TIMAFLOR LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 17th March, 2017)

JUDGMENT

The claimant filed the memorandum of claim on 19.01.2016 through Kinyanjui Kirimi & Company Advocates. The claimant prayed for judgment against the respondent for:

1. Kshs.1, 383,096.00 being one year salary as compensation.
2. Such other dues as may be found due to the claimant.
3. Costs and interest.

The response to the memorandum of claim was filed on 07.04.2016 through A.F.Gross Advocate. The respondent prayed that the suit be totally dismissed as it lacked merit.

By the letter dated 03.05.2014 the respondent employed the claimant as a purchasing officer. The claimant's appointment was confirmed by the letter dated 19.05.2014. By the letter of appointment dated 19.05.2014 the respondent employed the claimant on permanent terms as the respondent's Purchasing & Internal Systems Officer, Category C, and Band 6.

By the letter dated 12.08.2015 the claimant resigned from the respondent's employment stating thus, **"I hereby wish to tender my resignation from the Company Service with effect from today, 12th August, 2015 after a year and 3 months' Service."** The respondent accepted the resignation with regrets as per the letter dated 12.08.2015 and offered to pay the claimant's terminal dues including days worked from 21.07.2015 to 12.08.2015 being 15 days; 5 due leave days; two months notice pay; and one way leave travelling allowance.

On 14.08.2015 the claimant signed acknowledging receipt of Kshs.215, 983.00 being in full and final settlement and discharge of all sums due to him and acknowledging that he had no further claims against the company including claims for reinstatement into his job or further compensation.

The claimant has moved the court alleging unfair termination of his contract of service.

The claimant testified that on 12.08.2015 he reported on duty as usual at 8.00am. At that time he had no dispute or grievance with his employer. At about 9.00am the respondent's general manager summoned the claimant to the boardroom and the respondent's human resource manager joined the meeting. The general manager then informed the claimant that the respondent no longer required the services of the claimant. The general manager informed the claimant that the company was restructuring and the claimant's services would not be required and further that the claimant had used some money improperly. The claimant testified that he inquired whether it was about restructuring or misuse of the money and the general manager replied thus, going forward, a decision had been made and the director was willing to give the claimant a send off package. The general manger asked the claimant not to fight back. The claimant was then to be given the final package subject to his resignation. Thus he resigned as per the handwritten letter and signed for the final dues. In his testimony, the claimant stated thus, **"I signed the resignation letter upon condition that I would be paid terminal dues. That was honoured...."**

RW was the respondent's human resource officer who attended the boardroom meeting at which the claimant signed the resignation letter. RW testified that the claimant opted to resign in lieu of a disciplinary process raised by the general manager about the money that was allegedly taken by the claimant. RW testified that it was not about restructuring and in fact another person had been employed to replace the claimant.

The court has considered the evidence. There is no reason to doubt that the claimant voluntarily resigned from the respondent's employment. The claimant clearly had an opportunity and power not to write the resignation letter. On the subsequent process he signed and acknowledged the payment of final dues with a disclaimer that he had no further claims against the respondent. Further the claimant in his own evidence confirmed that the respondent honoured the agreed terminal package. The evidence was that after resignation the claimant enjoyed other terminal benefits from the respondent including payment of the school fees for the claimant's children. The court returns that the parties engaged in a valid contract to terminate the contract of employment and the claimant's claims and prayers are not justified.

In conclusion, the claimant's suit is hereby dismissed with costs.

Signed, dated and delivered in court at Nyeri this Friday, 17th March, 2017.

BYRAM ONGAYA

JUDGE