



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO. 138 OF 2016

(Before D. K. N. Marete)

KENYA PRIVATE UNIVERSITIES WORKERS UNION.....CLAIMANT

VERSUS

UNIVERSITY OF EASTERN AFRICA BARATON.....RESPONDENT

JUDGEMENT

This matter is originated by a Memorandum of Claim dated 12th September, 2016. It does not disclose an issue in dispute on its face.

The respondent by a Respondent's Response to the Claim dated 3rd February, 2017 denies the claim and prays that it be struck out and dismissed with costs.

The claimant's case is that she worked for the respondent from 17th January, 1999 to 17th September, 2013, all amounting to thirteen years.

She was terminated wrongfully and unprocedurally contrary to the Employment Act, 2007, section 37 and the Staff Handbook, 2005 pages 42-45. This was prompted by a complaint about a unrealistic letter given to her by the respondent's Board Secretary. She was not paid, or at all.

The claimant's further case is that this dispute was reported to the County Labour Officer, Nandi but deliberations towards a resolution ended in a stalemate.

The claimant enlists the following documents in support of a case for employment;

- i. A letter of award of three months contract dated 11th September, 2013.*
- ii. A letter of employment history from the respondent dated 3rd October, 2013.*
- iii. Letter of contract employment dated 1st July, 2012.*
- iv. Letter of termination of work of dental clinic dated 15th March, 2004.*

All these are not clear on permanent employment on the terms thereof.

The respondent's case is that the claimant was not a permanent employee for 13 years 9 months as claimed. Instead, she was engaged on several separate contracts of employment as follows;

- i. July – August 2005 casual on hourly rate*
- ii. May 2006 – June 2010 casual on hourly rate*
- iii. July 2010 – June 2011 one year contract*
- iv. July 2011 – June 2012 one year contract*
- v. July 2012 – June 2013 one year contract*

On expiry of the one year contract on 30th June, 2013 the claimant worked on casual basis up to 31st August, 2013 and was paid her dues. She then quit employment. Again, on 11th September, 2013 she was offered a 3 month contract but declined to sign the same in endorsement of the contract.

It is the respondent's further case that the claimant worked as a housekeeper at the dental clinic for about 2 years but these services were terminated on 17th March, 2004. The dental clinic was in any event a separate entity.

The respondent's penultimate case is that the claimant was paid all her dues under the various contracts of employment and is not owed a farthing. Again, she quit on expiry/termination of her contract on 31st August, 2013 and therefore the claim of termination is unfounded.

The issues for determination therefore are;

1. Was there a termination of the employment of the claimant
2. Whether the termination of the employment of the claimant, if at all, was wrongful, unfair and unlawful?
3. Is the claimant entitled to the relief sought?
4. Who bears the costs of this claim

The 1st issue for determination is whether there a termination of the employment of the claimant. The parties hold diametrically opposed positions on this. I however note that the claimant's case does not display or establish a case of termination of employment or at all. Unless this court chooses to rely on the bare testimony and pleadings of the claimant, it would be difficult to find a case of termination in the circumstances. This is because this is not supported by evidence.

The respondent's case is the probable of the two scenarios. She forments a case of casual and contractual employment of the claimant on diverse occasions for which she was paid. There is even a correlation of the evidence of the parties on the issue of refusal to sign documents which I would interpret to mean refusal to sign a continued contract as alleged by the respondent. The claimant's case therefore fails on a balance of probabilities and preponderance of evidence. I therefore find a case of no termination of employment for the claimant and hold as such.

Having lost on a case of termination, all other issues dissipate into nothingness.

I am therefore inclined to dismiss the claim with orders that each party bears their own cost of the same.

Delivered, dated and signed this 26th day of April 2017.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Komen of Kenya Private University of Workers Union for the Claimant.
2. No appearance for the Respondent.