



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 434 OF 2015
BETWEEN
STEPHEN ODHIAMBO OKELLO CLAIMANT
VERSUS
TRANSPARES [K] LIMITEDRESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Matete Mwelese & Company Advocates for the Claimant

Mogaka Omwenga & Mabeya Advocates for the Respondent

JUDGMENT

1. The Claim was filed on 1st July 2015. The Claimant states he was employed by the Respondent as a Mechanic, in July 2014, earning a monthly salary of Kshs. 20,000. His contract was terminated by the Respondent on 24th February 2015, after the Claimant complained that he had been compelled to leave work late. He was not heard before termination. He did not utilize his annual leave days, and was paid nothing in lieu thereof. He claims against the Respondent:-

- a) 1 month salary in lieu of notice at Kshs. 20,000.
- b) 12 months' salary in compensation for unfair termination at Kshs. 240,000.
- c) Salary for breach of contract at Kshs. 100,000.
- d) Leave on pro-rata basis at Kshs. 15,000.
- e) 32 Sundays worked at Kshs. 16,000.
- f) Costs.

g) Certificate of Service.

2. The Respondent filed its Response on the 27th August 2015. It is conceded the Claimant was employed by the Respondent on 22nd July 2014, on a gross monthly salary of Kshs. 20,000. He was assigned duty to repair Respondent's vehicle on the 23rd February 2015. He failed to complete his work within the recommended time. When asked by the foreman why he had failed to complete the work on time, so that the Truck could proceed on its scheduled journey, the Claimant rudely replied that he was tired. The journey was delayed leading to loss of revenue to the Respondent. The Claimant was issued with a letter to show cause why he should not be disciplined on 23rd February 2015. He left and failed to report back. He was therefore summarily dismissed. The Respondent urges the Court to reject the Claim, with costs to the Respondent.

3. The Parties agreed on 20th September 2016 to have the Claim considered and determined on the strength of the record. The matter was last mentioned in Court on 11th November 2016 when Parties confirmed the filing of their Submissions and Judgment date reserved.

Upon evaluation of the Pleadings, Documents, Witness Statements and Submissions filed by the Parties the Court Finds:-

4. The Claimant was employed by the Respondent Company as a Mechanic on 22nd July 2014. He was issued a written contract for a period of 1 year. Parties signed the contract on same date. The contract was to expire on 21st July 2015.

5. The Claimant did not serve the full term. He alleges the Respondent terminated his contract on 24th February 2015, after the Claimant complained he was being made to work late hours.

6. The Respondent's account is that the Claimant was assigned repair of a Truck on 23rd February 2015, which was loaded with cargo, intended for delivery to a Customer. He failed to complete the task on time and the journey was delayed, occasioning loss to the Respondent. On being asked to explain his laziness, the Claimant was rude to the foreman. He was issued with a letter to show cause why he should not be disciplined on 24th February 2015. He replied and did not report to work after this. The Witness Statement of James Tawa, Respondent's Human Resource Manager states that "*this led to dismissal.*"

7. There is no letter of dismissal on record. It is not shown to the Court when, after 24th February 2015, after the Claimant replied to the letter to show cause, a decision was made to dismiss the Claimant.

8. It was not shown by the Respondent that the Claimant abandoned his work, leading to dismissal by the Respondent.

9. The Claimant explained in his reply to the letter to show cause that he had been assigned duty to repair Respondent's Truck which had a major oil leakage. He told his Supervisor it was not possible to complete the task as it was late, and the Claimant was tired. Going on with the work at that late hour would have resulted in shoddy work and defect in the engine. The boss, one Mohammed overheard the conversation between the Claimant and his Supervisor and asked the Claimant to report to Mohammed's Office.

10. This explanation by the Claimant tallies with the Respondent's account, in that there was assignment of repair work. The disagreement was on the time it would take to complete the work. The Claimant felt he was tired, and there was no time to do a decent repair work. The boss wanted it all done and delivery made for the Customer without delay.

11. The boss then called the Claimant to the Office, and terminated his contract. This account seems to the Court the most persuasive. There Respondent acknowledges it dismissed the Claimant, and this would, in the view of the Court be at the time the Claimant was asked to report to Mohammed's Office, who had overheard the conversation between the Claimant and his Supervisor, and detected some amount

of rudeness on the part of the Supervisee.

12. The Respondent did not establish valid reason in terminating the Claimant's contract prematurely. Tawa suggests in his Statement that the Claimant left and never came back, leading to his dismissal. The reason here would be desertion. Secondly, it is suggested the Claimant failed to complete his given task on time. He gave an explanation when asked to do so by the Respondent. The Respondent did not dispute this explanation and never escalated the disagreement to a full blown disciplinary hearing, where Parties would affirm their respective positions. The Claimant was not heard, either on desertion, rudeness [insubordination], or failure to complete his work on time.

13. Termination was unfair with regard to lack of valid reason and fair procedure. It did not conform to the standards of fairness, created under Sections 41, 43 and 45 of the Employment Act 2007. ***The Claimant is granted the equivalent of 5 months' gross salary in compensation for unfair termination at Kshs. 100,000.***

14. He did not support the prayers for salary for breach of contract; 32 Sundays worked; and pro-rata leave. He had not completed 1 year in employment. He was not in a leave earning period at the time of termination. These prayers are declined.

15. ***He is granted 1 month salary in lieu of notice under Section 36 of the Employment Act 2007 at Kshs. 20,000.***

16. ***The Respondent shall release to the Claimant his Certificate of Service under Section 51 of the Employment Act forthwith.***

17. No order on the costs.

IN SUM, IT IS ORDERED:-

a) Termination was unfair

b) The Respondent shall pay to the Claimant the equivalent of 5 months' salary at Kshs. 100,000 in compensation for unfair termination; and 1 month salary in lieu of notice at Kshs. 20,000- total Kshs. 120, 000.

c) Certificate of Service to issue.

d) Other prayers are rejected.

Dated and delivered at Mombasa this 16th day of June 2017

James Rika

Judge