



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 596 OF 2014

RUTTO KIPKOECH.....CLAIMANT

v

RILEY SERVICE LIMITED.....RESPONDENT

JUDGMENT

1. Rutto Kipkoech (Claimant) moved Court on 18 November 2014 against Riley Service Ltd (Respondent) and the issues in dispute were stated as

1. Unfair termination
2. Notice
3. Underpayment
4. Normal overtime
5. Leave for 6 years.

2. The Respondent filed a Statement of Response on 31 March 2015 to which the Claimant replied to on 18 September 2015. Witness statements and documents were also filed.

3. The Cause was heard on 16 March 2017, and the Claimant filed his submissions on 3 April 2017, while the Respondent submissions were not on file by this morning.

4. Although the Court directed the parties to agree on *Issues* for trial, it is the Respondent which filed its *Proposed Issues*, and the Claimant agreed to the adoption of the *Proposed Issues*.

5. The Respondent had proposed some 11 issues, but the same can be condensed into, *whether the cause(s) of action were compromised, whether the causes of action advanced are statute time barred, whether there was unfair termination of employment, whether Claimant was underpaid, whether Claimant worked overtime, whether Claimant was paid accrued leave and appropriate remedies/orders.*

Whether cause(s) of action were compromised

6. Issues 2, 3 and 4 as adopted for determination require the Court to determine whether the claims advanced by the Claimant were compromised.

7. The Claimant admitted in his Memorandum of Claim and also testified that after he reported a

complaint to the Labour Office, he was paid Kshs 60,717/55.No breakdown of the payments were given to him.

8. The Respondent on its part conceded that conciliation was undertaken and an agreement was reached whereby the Claimant (and other employees) was paid Kshs 60,717/55 in final settlement of terminal dues. The Claimant acknowledged the payment.

9. The Respondent produced a schedule showing that the amount paid to the Claimant comprised *ex gratia pay*, days worked, leave pay for 21 months, uniform refund less PAYE and one month salary.

10. In terms of demonstrating what comprised the complaint made to the Labour Office, the Respondent produced a letter dated 15 July 2014 addressed to it, in which the issues raised were *unlawful redundancy, payments of pay in lieu of notice and leave, severance pay, uniform refund, underpayments and any other legal dues*.

11. Although there was no interrogation of the Claimant's testimony that he was not given a breakdown of the dues paid, the fact that his name appears in the Labour Officer's letter as one of the complainants, and further considering that he acknowledged receipt of the dues paid through the Labour Office and signed that the payment was in final settlement of his dues, the Court is of the view that in accepting the payment and signing the settlement agreement, he compromised the heads of claim enumerated therein.

12. The Court would therefore find that the heads of claim for underpayments, uniform deduction, severance pay, pay in lieu of notice and overtime were compromised.

13. With the finding, the substance of the Claimant's contentions fall away and it becomes an academic exercise for the Court to delve into an examination of the other issues raised for determination.

14. Before concluding the Court wishes to note that the Claimant did not attempt to address the question of compromise of the Cause in his submissions, despite it being a key issue for determination.

Conclusion and Orders

15. The upshot of the foregoing is that the Court finds no merit in the case advanced by the Claimant and orders that the Cause herein be dismissed.

16. Each party to bear own costs.

Delivered, dated and signed in Nakuru on this 10th day of July 2017.

Radido Stephen

Judge

Appearances

For Claimant Mr. Opar instructed by Korongo & Co. Advocates

For Respondent Mr. Weru instructed by Obura Mbeche & Co. Advocates

Court Assistant Nixon