



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 41 OF 2016

(BEFORE HON. LADY JUSTICE MAUREEN ONYANGO)

RUTH KHASEYI SIVAACLAIMANT

-VERSUS-

EASTERN PRODUCE (K) LTD RESPONDENT

JUDGMENT

Vide Memorandum of Claim dated 15th February and filed on 16th February 2016 through M/S Chepkwony & Company Advocates, the Claimant avers that she was employed by the Respondent as a tea picker in 2008 and worked until 15th January 2016 when her employment was unlawfully terminated. She prays for the following remedies-

- a. A declaration that the termination process as carried out by the respondent is unlawful and that during her employment with the respondent she was not remunerated as required by law.
- b. Payment of the sums of money claimed under paragraph 9 above.
- c. Costs and Interests.
- d. Any other relieve the Honourable may deem fit to grant.

The Respondent filed a Reply to the Memorandum of Claim on 26th February 2016 through M/S Kibichiy & Company Advocates denying the allegations in the Claim.

The case was fixed for hearing on 22nd March 2017 when the Claimant testified on her behalf led by Mr. Rugut. The Respondent who was represented by Ms. Kipyegon called one witness CHARLES OUMA AROGO.

Claimant's Case

It is the Claimants case that she was employed by the Respondent as a tea picker in August 2008. Her wages were paid according to the quantity of tea picked and she earned between Kshs. 9,000/- and 11,000/- per month. Initially she was paid in cash but later through an ATM and issued with payslips, samples of which are in her bundle of documents. She worked from 7am to 5pm on Monday to Saturday and rested on Sunday. During high season she worked on Sunday too. She did not work on Public Holidays.

The Claimant testified that she went to work as usual on 6th January 2016. When she went to weigh the tea she had picked for the day the weighing clerk refused to weigh the tea and advised her to report to the office. She went to the office to see the manager but found that he had left. The following day the weighing clerk told her not to report to work until the manager approved as her number was not in the computer. She testified that she worked for three days in that month and was paid for the days worked. She testified that she was stopped from working between July 2010 and 4th January 2011 when she was pregnant as was customary in the company. She worked continuously and did not take annual leave. She prayed for remedies as set out in her memorandum of Claim.

Under cross examination the Claimant testified that she was issued with fixed term contracts which were renewed upon expiry and her last contract was for three months and was not renewed.

Claimants Submissions

In the written submissions filed on behalf of the Claimant it is submitted that she had proved that her contract was terminated verbally without notice and that she is entitled to the prayers as set out in her claim.

Respondent's Case

RW1 CHARLES OUMA AROGO testified that he was a Grade 1 Supervisor at the Respondent's Chemumu Estate in Kapsigak Division and he knew the Claimant who had worked for the Respondent from 2008 to January 2016 as a tea picker. He testified that she worked on fixed term contracts continuously as her contracts were renewed upon expiry. Her last contract was for the period 1st December 2015 to 31st January 2016. She worked from 4th to 14th January 2016 then asked for casual leave on 15th January 2016. She was expected back on 17th January 2016 but was absent until 31st January 2016 when her contract expired. She was paid for all days worked. He testified that the contract was not terminated as she alleges.

Under cross examination RW1 testified that the Claimant was a very good worker, that tea pickers were expected to pick 34 kgs a day but there was a day the Claimant picked 91 kgs in a day. He testified that the Claimant did not have any disciplinary issues. He testified that when the Claimant failed to report back to work he did not ask her why because this is only done for permanent workers. He testified that the Claimant did not go on annual leave as the company did not give annual leave to contract employees.

Respondents Submissions

In the submissions filed on behalf of the Respondent it is submitted that the Claimant was not unfairly dismissed or her contract otherwise unfairly terminated, that she left work because her contract lapsed. It is submitted that the Respondent met all its obligations under the contract. The Respondent relied on the case of **Isaiah Makokha v Basco Products Limited [2014] eKLR** in which the court held that termination of contract through expiry where there is no agreement to renew does not amount to unfair termination.

Determination

I have considered the pleadings, the viva voce evidence and written submissions filed by the parties. The issues arising for determination are in my opinion the following-

1. Whether the termination of the Claimant's employment was unfair;
2. Whether the Claimants are entitled to the remedies sought.

1. Whether the termination of the Claimant's employment was unfair

It is the Claimant's averment that she went to work as usual on 5th January 2016 but was not allowed to weigh her tea at the end of the day because her name was missing in the computer. The Respondent however produced records of attendance showing the Claimant was at work from 4th to 14th January 2016, took casual leave on 16th, was off duty on 17th which was a Sunday and absent from 18th to 31st January 2016. The record even reflects the quantity of tea the Claimant picked on the days she worked. The Respondent further produced the Claimant's payslip confirming the payments for the days worked which she admitted to have been paid.

I am convinced that the Claimant was at work according to the records filed by the Respondent which the Claimant did not contest. I therefore do not find any evidence of unfair termination by the Respondent.

2. Whether the Claimants are entitled to the remedies sought

Having found that the Claimant was not unfairly terminated she is not entitled to pay in lieu of notice as claimed or at all. She is not entitled to severance pay which is only payable where an employee is declared redundant which she was not. She is further not entitled to overtime as she was paid on the basis of the quantity of tea picked and not on hourly basis. She is further not entitled to compensation for unfair termination.

The Claimant is however entitled to pay in lieu of annual leave. RW1 testified that the company does not give annual leave to employees on contract. The law provides that any employee who works for a minimum of two months is entitled to annual leave. This is provided for in both the Employment Act and in the Regulation of Wages and Conditions of Employment (Agricultural) Order.

RW1 confirmed that the Claimant worked continuously from August 2008 to 15th January 2016, a period of 7 years and 5 months. At 21 days leave per year worked and based on the CBA minimum rate of pay indicated in her contract of Kshs 10052, I award the Claimant pay in lieu of leave for 155.75 days at Kshs. 52,186.70.

In view of the amount awarded the Respondent shall pay Claimants costs limited to instructions fees only.

Orders accordingly.

Dated Signed and Delivered This 19th Day of October, 2017

MAUREEN ONYANGO

JUDGE