



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 109 OF 2012

CHRISTOPHER WERE.....CLAIMANT

VERSUS

ULTRA LIMITED.....RESPONDENT

JUDGMENT

1. The claimant in this suit avers that he entered into monthly contract of service commencing and expiring beginning and end of every month. The first contract was in January, 2009. He was hired by the respondent as a printer at a monthly salary of Kshs.12,500/=. He was further granted a special allowance of Kshs.1,500 per month payable with his monthly salary.
2. The claimant complained that by a letter dated 22nd December, 2010 his services were terminated by seven days' notice effective 30th December, 2010. He contended that having served the respondent as a printer for a continuous period of two years by signing monthly contracts, he was entitled to one contract for 24 months. He further contended that since his remuneration was monthly, he was entitled to a month's notice.
3. The claimant therefore sought an order for compensation for wrongful dismissal and unfair termination of services.
4. The respondent in its memorandum of defence filed on 23rd November, 2012 averred that the claimant resigned in May, 2010 and his terminal dues were calculated and he collected the same without any dispute. According to the respondent, the claimant was again rehired in July, 2010 hence could only claim dues from July to December, 2010 which dues the respondent averred were fully paid.
5. In his evidence in Court the claimant repeated most of the averments in his memorandum of claim and stated further that he used to work overtime and that his supervisor used to record the overtime. He further stated that the respondent never remitted any of his NSSF deductions. The respondent did not call any evidence and relied on supporting documents as filed.
6. In cross-examination, the claimant stated that he was paid Kshs.14,000/= per month and that he worked for four months. He further stated that his total claim was Kshs.80,246/= and not Kshs.180,246 as pleaded.
7. He denied knowledge of reasons for his termination letter and that the letter did not state the reasons for his termination.

8. Exhibit “were 1” attached to the claimant’s memorandum of claim are sample contracts signed between the claimant and the respondent. At clause 1 it is clearly stated that the contract was for one month renewable depending on the company’s operational needs and claimant’s performance. In law, there is no obligation to renew a fixed term contract hence the provision in this contract that renewal was subject to the company’s operational needs and claimant’s performance.

9. It was the claimant’s evidence and the respondent’s concurrence that he voluntarily resigned from employment in May, 2010. The claimant though avers he was not paid fully his dues upon resignation, does not state by how much he was underpaid. The terminal dues computation sheet attached to the respondent’s memorandum of response was signed by the claimant and he declared therein that he had no further claim against the respondent. It can therefore be only concluded that the claimant’s previous engagement with the respondent terminated when he resigned in May 2010 and was paid his terminal dues. The subsequent engagement on a month to month contract from June 2009 was therefore a new engagement and could not be construed as a continuation of the old contract.

10. This was subsequently terminated on 22nd December, 2010 effective 30th December, 2010. The claimant was therefore given 7 days’ notice of termination of employment. Section 35(1) (c) of the Employment Act provides that where the contract is to pay wages or salary periodically at intervals of or exceeding one month, the contract is terminable by either party at the end of the period of twenty-eight days next following the giving of notice in writing. Section 36 further provides that either of the parties to which section 35(5) applies may terminate the contract without notice upon payment to the other party of the remuneration which would have been earned by the other party or paid by him in respect of the period of notice required to be given.

11. Section 45 requires that a termination of employment be done for valid reasons and that the reason be a fair reason and further that the termination be conducted through a fair procedure.

12. The notice of termination marked “Were 3” annexed to the claim not only gives the claimant seven days notice but also does not state the reasons why his services were being terminated. The notice is therefore not in compliance with the provisions of the Employment Act referred to above. The Court therefore finds that the claimant was wrongfully dismissed as well as unfairly terminated contrary to the provisions of the Employment Act. The Court therefore awards the claimant as follows:-

Kshs.

a. One month’s pay in lieu of notice.....14,000.00

b. Two months pay as compensation for unfair

termination of services.....28,000.00

42,000.00

c. Costs of the suit.

13. It is so ordered.

Dated at Nairobi this 19th day of February 2016

Abuodha J. N.

Judge

Delivered this 19th day of February 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge