



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 2473 OF 2012

(Before Hon. Lady Justice Hellen S. Wasilwa on 15th February 2016)

FESTUS MUTUA KYANIACLAIMANT

VERSUS

ALL PACK INDUSTRIES LIMITEDRESPONDENT

JUDGMENT OF THE COURT

1. The Claimant herein filed his Memorandum of Claim on 10.12.2012 through the firm of Eric Ntabo & Company Advocates. He claims unlawful termination of his employment and failure to pay his terminal dues by the Respondent.
2. The Claimant's case is that on 1.7.2007, he was employed by the Respondent as a general worker. He performed his duties diligently and resourcefully for about 6 years as per the documents he has exhibited. His salary was 6,999/= per month.
3. On 20.7.2011, the Claimant avers that he was placed on contract vide his appointment letter Appendix 2C. The contract was to take effect on 1.7.2011 and was to be for a period of 6 years.
4. The contract was to cease on 31.12.2011. The salary was increased to 8,049/= (gross). The Claimant avers that when the contract ended on 31.12.2011, he continued to work and even in January 2012, he was paid a salary as per his payslip Appendix 3.
5. On 18/1/2012 however he was dismissed and this was without any notice nor being given any termination letter. He states that during the period he worked he was never given leave and never was he paid any leave allowance.
6. The Respondents filed their Response to Memorandum of claim on 11.9.2013 through the firm of Soita Saende Advocates. The Respondents denied the contents of the Memorandum of Claim and further deny that the Claimant was entitled to any salary review annually.
7. They also aver that the Claimant's salary was gross 13,191/= in 2012 as per his attached payslip. They deny summarily terminating the Claimant or unfairly dismissing the Claimant but that his contract of service lapsed.
8. The Respondents further deny that the Claimant is entitled to prayers he has sought especially rest days, public holidays and annual leave. The Respondents asked Court to dismiss the Claimant's case accordingly.
9. I have considered all evidence on record and the issues for determination are as follows:

1. ***Whether the Claimant was terminated or his contract lapsed.***

2. ***Whether the Claimant is entitled to prayers ought.***

10. On the 1st issue, the Claimant was employed on a contract of 6 months which was to lapse on 31/12/2011. However upon expiry of this contract the Respondent allowed the Claimant to continue working and even paid him his January 2012 salary as per his pay slip exhibited in Court.

11. By the Respondent allowing the Claimant to work in January 2012 and even paying for the work done, they were in effect saying that the contract had been renewed for a further 6 months, that the contract was rolling over.

12. The Respondent would of course not have been expected to give him notice for the contract ending in December 2011 but for the renewed contract notice was mandatory as per claim 5 of the contract. It was also expected that this contract will roll over for 6 months and could only be terminated after following due process as set out in Section 41 of employment Act 2007.

13. It is this Court's finding that this contract started in January 2012 and had not lapsed when it was terminated in January 2012.

14. It therefore follows that the termination of this contract was unfair and unlawful.

15. I find for Claimant as follows:

1. ***1 months salary in lieu of notice = 8,049/=***

2. ***3 months salary as damages for unlawful termination = 3 x 8,049 = 24,196/=***

TOTAL = 32,196/=

3. ***Issuance of a Certificate of Service.***

4. ***Costs and interest at Court rates with effect from date of this Judgment.***

Read in open Court this 15th day of February, 2016.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Kinyua for Respondent – Present

Claimant – Absent