



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 1519 OF 2013

JOHN NDAKAA NANDWA.....CLAIMANT

VERSUS

ANCARTA CONSTRUCTION COMPANY LIMITED.....RESPONDENT

JUDGMENT

1. The claimant in this suit avers that he was employed by the respondent in January, 2012 and worked until 27th July, 2013 when according to him, his services were terminated without justification at all. On termination he claims he was not given any charges against him nor given an opportunity to defend himself. He further claimed he was not paid terminal benefits upon termination.
2. The respondent on the other hand admits the claimant was its employee but his services were terminated when he was lawfully laid off in July 2013 when the respondent completed its ongoing construction projects within Nairobi. According to the respondent, the claimant's services were terminated in accordance with section 40 (i) (c), (e), (f) and (g) of the Employment Act. Upon declaration of redundancy the claimant was paid Kshs.10,424/= in settlement of his dues.
3. At the hearing of the claim the claimant testified that he was employed by the respondent as a mechanic at a daily wage of Kshs.500/= but payable weekly. He was enrolled to NSSF and NHIF. It was further his testimony that in the course of his duties he got injured in the hand and used his own money which he was told would be refunded upon submitting receipts. When he returned to work after treatment he claimed he was refused entry by the security guard.
4. In cross-examination he stated that he was employed in February, 2012 initially as a casual and later became a mechanic. He stated that he paid Kshs.3,424 on account of his medical expenses but had no receipts to show this in Court.
5. The respondent on the other hand gave evidence through Tabu Nyegenje who stated that he worked for the respondent as a foreman and that he arranged work plans and recruited casuals. It was his evidence that the respondent told him he had knowledge of mechanics. According to him the claimant joined the respondent around June, 2013 and worked until June, 2013 when he and others were laid off when the project became complete. He produced payment sheets to show how the workers including the claimant were paid (D-ex 1). He further produced D-ex 2 which showed leave payment. According to him, leave and service were paid at the end of the contract.
6. The onus of proving reasons for termination of employment is on the employer. The

standard proof is on a balance of probabilities. On the other hand the onus of showing that the termination was unfair or dismissal wrongful is on the employee. Whereas the respondent has reasonably showed that the claimant's services were terminated on account of redundancy, the claimant has merely alleged he was wrongfully dismissed without showing in what way the dismissal was wrongful or termination unfair. The claimant has not even alleged that the redundancy was unprocedural. In any event even if a declaration of redundancy is found to be unprocedural the Court can only so declare so but not stop redundancy.

7. Section 40 of the Employment Act provides that in a declaration of redundancy an employee must be paid any leave due, not less than one month's notice or wages in lieu and severance pay at the rate of not less than fifteen days pay for each complete year of service.

8. Differences in dates aside, assuming the claimant was employed in January, 2012 as he averred, by the time of his services were terminated in July 2013 he had worked for approximately one year and seven months. Under provisions of sections 40 he would be entitled to one month's salary in lieu of notice, thirty three days of leave and severance pay for the year 2012. That is to say:-

Kshs.

a. One month's pay in lieu of notice	
(450 per day x 28 days).....	12,600.00
b. 33 days of leave with pay.....	14,850.00
c. Severance pay for 2012 @ 15 days pay....	6,750.00
d. Less money already paid.....	<u>10,424.00</u>
	<u>23,776.00</u>

9. The claimant will have costs of the suit.

10. It is so ordered.

Dated at Nairobi this 5th day of February 2016

Abuodha J. N.

Judge

Delivered this 5th day of February 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge