



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 2566 OF 2012

VERONICA MORAA & 28 OTHERSCLAIMANTS

VERSUS

INDU FARM (EPZ).....RESPONDENT

JUDGMENT

1. By memorandum of claim filed on 24th December, 2012, the claimants averred that on various dates between 1999 and January, 2009 the claimants were employed by the respondents in various capacities as exhibited in their contracts of employment earning gross salaries of between Kshs.11,873 and Kshs.14,000 per month. They further alleged that the 3rd claimant's basic salary was increased from Kshs.9,652 to Kshs.10,200/= but the respondent continued to pay the claimant a monthly salary of Kshs.9,652/=.
2. On 31st January, 2012 the respondent served the claimants with letters of termination without notice. The termination according to the claimants was on account of redundancy. The dispute was reported to the Minister for Labour for conciliation but the respondent refused to abide by the determination proposed by the conciliator.
3. The claimants complained that the respondent failed to furnish them with notice prior to the termination or declaration of redundancy. They further complained that they were never afforded an opportunity to be heard before the decision to terminate their employment was reached.
4. The respondent on their part contended that the claimants were from 2008 employed on fixed term contracts of employment. On or about February, 2011 the respondent begun experiencing low sales and production due to economic forces beyond its control. Following a steep drop in sales in January, 2012 the respondent decided not to renew the contracts of its employees whose contracts were due to expire on 31 January, 2012 and 28th February 2012. According to the respondent, all the affected employees were paid their terminal dues including one month's salary, house allowance, transport allowance and gratuity.
5. In their final submission, the claimants submitted that the contracts provided for termination notice if done before expiry yet they were summarily terminated. Counsel therefore submitted that the termination was unlawful and unfair. According to counsel, the identical termination letters did not make reference to expiration of the contracts as the basis of the termination. The reason given was reduced volume of work.

6. The respondent on the other hand submitted that the claimant's contracts were not terminated due to redundancy as alleged. According to Counsel, the contracts being fixed term contracts lapsed and were not renewed. In support of these submissions counsel relied on the case of Isaiah Makhoha vs. Basco Products (K) Ltd, and Benard Wanjohi Muriuki v. Kirinyaga Water and Sanitation company Ltd.

7. According to Counsel, the claimants had fixed contracts which expired on 31st January, 2012. Since the contracts had expired, the respondent only informed the claimants of the reasons for non-renewal but was not obliged to do so. Counsel further submitted that non-renewal of a fixed term contract did not amount to redundancy since the contract was fixed and had an automatic termination date and further that the contract did not provide for automatic renewal.

8. Counsel submitted that the fact that the respondent was unable to renew the contracts because of reduced volume of work did not change the expiry dates of the contracts.

9. Regarding recommendation of the Ministry of Labour, Counsel submitted that the recommendation was erroneous and without basis. The conciliator failed to consider that the claimants had fixed term contracts which expired and the respondent exercised its right not to renew the contracts.

10. From pleadings and submissions by counsel, the fundamental question to be decided and upon which the reliefs sought are predicated is whether the claimant's herein were wrongfully declared redundant or at all.

11. It was common ground that the claimants were fixed term contract employees for the various periods pleaded. It was further common ground that on 31st January, 2012 the claimants were served with uniform termination letters citing reduction of business as the reason for termination.

12. The letters read in part as follows:-

“Due to the reduced volume of work, we regret that we will not be renewing your contract. This will take effect immediately from 1st February, 2012.”

13. The letter further advised the claimants to clear with Human Resource and thereafter collect their final dues as well as service letter. The claimants were paid each of them as a result, one month's salary, house allowance, transport and gratuity.

14. The standard letter of appointment issued to the claimants dated 1st February 2011, was to run until 31st January, 2012. This coincided with the termination letters. The contract provided that either party could terminate the contract before expiry by giving one month's notice or pay in lieu of notice.

15. The Court has carefully reviewed and considered the contracts and the letters informing the claimants of the decision not to renew their contracts and is of the finding that this could not have been a case of redundancy as contemplated under section 40 of the Employment Act.

16. Parties to a contract are bound by it and a Court of law cannot unless on grounds of illegality, fraud or unconscionability interfere with a contract willingly and voluntarily entered into by the parties. The claimants do not deny that they were hired on fixed term contracts which on occasion had been renewed. The renewal as per the contract was a preserve of the management. It was a matter at the discretion of the management. That is to say in exercising that discretion, the management had to take into consideration among other things sustainability of the wage bill vis-à-vis sales and general business performance.

17. It was therefore quite legitimate for the respondent to exercise its discretion not to renew the

contracts due to reduction in work volume. The contention that because the contract had a provision for one month's notice of termination hence the claimants were entitled to one month's notice is not sustainable. The notice provision could only apply in circumstances where the contract was to be terminated prematurely which was not the case here.

18. The Court therefore finds the claim unmerited and hereby dismisses the same with no order as to costs.

19. It is so ordered.

Dated at Nairobi this 27th day of May 2016

Abuodha Jorum Nelson

Judge

Delivered this 27th day of May 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha Jorum Nelson

Judge