



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 1118 OF 2015

HENRY AGANDA.....CLAIMANT

VERSUS

FREIGHT IN TIME LIMITED.....RESPONDENT

RULING

1. The issue in the motion dated 30th June, 2015 concerns a motor vehicle which the claimant came into possession during his employment with the respondent.
2. In his submissions in support of the application, Counsel for the claimant submitted that the claimant had made a strong prima facie case with a high probability of success. Mr. Ogada further submitted that the balance of convenience was in favour of the claimant whose family would be greatly inconvenienced if the motor vehicle was taken away by the respondent. According to Counsel the contract of employment between the claimant and the respondent provided for the manner in which the contract could be brought to an end. This included giving one months' notice or payment in lieu. This did not happen in the claimant's case.
3. Counsel submitted that the claimant was called on 1st June, 2015 by his line manager a Mr. Jerse Thuo and informed that his services had been terminated over performance issues. This according to Mr. Ogada, was instant and verbal since no letter accompanied the verbal communication. The claimant therefore submitted that the dismissal was illegal and unlawful.
4. Mr. Ogada submitted that the response contained in the respondent's replying affidavit did not address the issue of claimant's dismissal. The affidavit according to counsel simply alleges the claimant was out of work for unknown reasons and accepted to resign voluntarily yet this was not supported by any documents or letter of resignation.
5. Concerning the ownership of the vehicle, counsel submitted that the Court should look beyond the registration of the vehicle to determine the real owner. According to counsel, although the vehicle was registered in the respondent's name, it was for all intents and purposes the claimants'. The claimant applied for a loan to purchase the vehicle and undertook to repay the loan out of his salary. The vehicle was therefore registered in the name of the respondent pending the recovery of the sum borrowed.
6. The respondent on its part through Arum & Co. Advocates submitted that the application did not meet the requirements and grounds for granting injunction. According to Counsel, the

claimant admitted applying for a loan which he further admits not servicing on account of his alleged dismissal. Counsel submitted that the vehicle was registered in the name of the respondent pursuant to a valid sale agreement and the said agreement expressly provided that the vehicle shall be under the ownership of the respondent until the sum borrowed was fully recovered. The nature of the claimant's case was that the wrongful dismissal and had no nexus with ownership of the vehicle bought by a loan advanced to him.

7. The Court has considered the application, the affidavit in support thereof and the respondent's replying affidavit in opposition. The Court has also as above reviewed submissions by counsel in support of their respective positions. The Court is thus of the view and finds that the motor vehicle in issue was purchased in the context of employment relationship between the claimant and the respondent. The claimant applied for a car loan which principally was repayable from his salary. This loan agreement cannot therefore be isolated from the contract of employment between the parties.

8. The claimant has contested the reasons and process of his dismissal. The claim as filed raises prima facie case with probability of success. It therefore merits the grant of an interlocutory injunction as sought by the applicant.

9. In the circumstances the Court allows the motion dated 30th June, 2015 pending the hearing and determination of the claim herein.

10. It is so ordered.

Dated at Nairobi this 17th day of June 2016

Abuodha Jorum Nelson

Judge

Delivered this 17th day of June 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha Jorum Nelson

Judge