



REPUBLIC OF KENYA
EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO. 20 OF 2014

(Before D. K. N. Marete)

JOSEAH KIPKORIR LANGAT.....CLAIMANT

VERSUS

KAPKATET TEA FACTORY COMPANY LIMITED.....RESPONDENT

JUDGEMENT

This matter was originated by way of a Memorandum of Claim dated 14th May, 2014. The issue in dispute is therein cited as;

- a. *Unfair termination of employment.*
- b. *Unpaid terminal dues and benefits.*

The respondent vide a Reply to Memorandum of Claim dated 3rd November, 2014 denies the claim and prays that the same be dismissed with costs to herself.

The claimant's case is that on or about January 2000, he was employed by the respondent on permanent and pensionable terms at a consolidated monthly salary of Kshs. 16,580.00. His allowances were as follows; house allowance, Kshs. 25,000.00, medical allowance, Kshs. 500.00, and leave allowance, Kshs. 4,000.00. His package also included 26 days annual leave.

It is the claimant's further case that with effect from January, 2000 he was designated as a manufacturing labourer of the respondent. He rose through the ranks up to his appointment as acting supervisor at the manufacturing section in 2005. He held this position up to the time of dismissal in 2012. This was by being sent on compulsory leave and also a denial of an opportunity to resume employment.

The claimant further avers that he has not been given reasons for this indefinite leave and has also not been paid his terminal dues. He contends that his termination of employment was unfair and unlawful in that he was not issued with a notice of termination despite his twelve (12) years service. This he avers is a contravention of S. 43 of the Employment Act, 2007.

He claims as follows;

- i. *Reinstatement to the position he was under Section 49 (3) of the Employment Act or re-engagement in a work comparable to that in which he was before termination or other reasonably suitable work at the same wage.*

ii. *His gross monthly salary for 12 months as under Section 49 (1) (c) of the Employment Act as follows;*

$$\text{Kshs. } 16,580.10 \times 12 = \text{Kshs. } 198,961.20; \text{ and}$$

iii. *His severance pay being;*

$$\text{Kshs. } 16,580.10 \times 15/30 \text{ days} \times 12 \text{ months} \times 12 \text{ years} = \text{Kshs. } 1,193,767.20; \text{ and}$$

iv. *His acting allowance between 2005 and 2012 being;*

$$\text{Kshs. } (20,640 - 16,580.10) \times 12 \text{ months} \times 6 \text{ years} = \text{Kshs. } 292,312.80; \text{ and}$$

v. *His unpaid leave for 12 years being;*

$$\text{Kshs. } 16,580.10 \times 26/30 \text{ days} \times 12 \text{ years} = \text{Kshs. } 172,433.04; \text{ and}$$

vi. *His house allowance being;*

$$\text{Kshs. } 2,500 \times 12 \text{ months} \times 12 \text{ years} = \text{Kshs. } 72,000; \text{ and}$$

vii. *His medical allowance being;*

$$\text{Kshs. } 500 \times 12 \text{ months} \times 12 \text{ years} = \text{Kshs. } 72,000; \text{ and}$$

viii. *His leave allowance being;*

$$\text{Kshs. } 4,000 \times 12 \text{ years} = \text{Kshs. } 48,000.$$

ix. *One month's salary in lieu of notice being; Kshs. 16,580.10*

$$\text{GRAND TOTAL} = \text{KSHS. } 2,354,054.34$$

In the penultimate he prays as follows;

- a. *A declaration that the respondent's dismissal of the claimant from his employment was wrongful and unlawful.*
- b. *An order of reinstatement of the claimant to the position he was or re-engagement in a work comparable to that in which he was before termination or other reasonably suitable work at the same wage.*
- c. *An order directing the respondent to pay the claimant his terminal dues and benefits of kshs. 2,354,054.34 as set out in paragraph 13 above.*
- d. *Costs of the claim.*
- e. *Interest on (c) and (d) above at court rates.*
- f. *Such other relief as this Honourable Court may deem fit and just.*

The respondent denies that the claimant was his employee on permanent and pensionable terms since 2000. She also denies the allegations of engagement and designation as well as rising through the ranks to Senior Supervisor.

Instead, he was employed as demand for work necessitated and therefore the non-renewal of the contract

did not amount to unfair termination as this complied with the terms of service for seasonal employees.

It is the respondent's further case that the allegation of indefinite leave by the claimant is a mistake as this was non renewal of a seasonal contract. No terminal dues were ever payable as this was not a termination of permanent employment or any employment, or at all.

The issues for determination therefore are;

1. Whether there indeed was a termination of the employment of the claimant by the respondent?
2. Whether the termination of the employment of the claimant by the respondent was wrongful, unfair and unlawful?
3. Whether the claimant is entitled to the relief sought?
4. Who bears the costs of the suit?

The 1st issue for determination is whether there indeed was a termination of the employment of the claimant by the respondent. The respondent in defence to the claim annexes the following documents;

1. A letter explaining the claim for unfair dismissal dated 31st January, 2013.
2. Various master rolls indicating the nature of employment and payment of dues to the claimant and other workers.
3. The various daily master roll reports for the claimant.
4. A letter of casual agreement form between the claimant and the respondent dated 11th April, 2007.
5. The respondent's payment listing for the period June 2003 to June 2019 for the claimant.

The claimant in support of the claim enlists and annexes the following documents;

1. A copy of his National Identity Card.
2. A letter of notification of verbal termination of the claimant by the branch secretary of KUPWAU.
3. A letter of verbal dismissal ostensibly by the claimant.
4. A demand letter for unfair termination by the claimant.
5. A response to the demand letter by one, B. Biwott – Factory Unit Manager.
6. Various payment advise slips for the period 2005 to 2012.

The fairest indicator for the terms of service of the claimant are his pay advise slips annexed to the claim. These indicate that he was paid at the end of the month but for days worked in the course of the month and this varied from month to month. This corresponds with the submissions of the respondent that the claimant was employed as a seasonal employee and not on permanent basis. The evidence of the parties tilts in favour of the respondent's case and I therefore find a case of no termination of the employment of the claimant by the respondent.

With a finding of no termination of the employment of the claimant, the other issues for determination eclipse into nothingness.

I am therefore inclined to dismiss the claim with orders that each party bears their own costs of the claim. And this clears the 4th and final issue for determination.

Delivered, dated and signed this 16th day of June 2016.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Kirwa instructed by Kirwa & Company Advocates for the claimant.
2. Mr. Mwita instructed by M/s Bett & Company Advocates for the respondent.